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UNEMPLOYMENT INSURANCE COMMISSION  
CANADA

SELECTED DECISIONS  
OF THE UMPIRE

1943 - 1948

CUC - 1 to 13

CUB - 2 to 425



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**SELECTED DECISIONS  
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**CUC—1 to 13**

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- Part 1. Code of Principles and Index**
- Part 2. Digests of Decisions**
- Part 3. Applicable sections of the Unemployment Insurance Act and Regulations**

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OTTAWA

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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
CONTROLLER OF STATIONERY  
1950



## **EDITOR'S NOTE**

This digest of selected decisions on questions of coverage and benefit, given by the Umpire under The Unemployment Insurance Act, 1940, is for the use of insurance officers, courts of referees, organizations of workers and others interested. In selecting the decisions for reprinting, a choice has been made of those which appear to contain the most nearly complete statement of the principles established by the Umpire and many may be termed "precedent" cases.

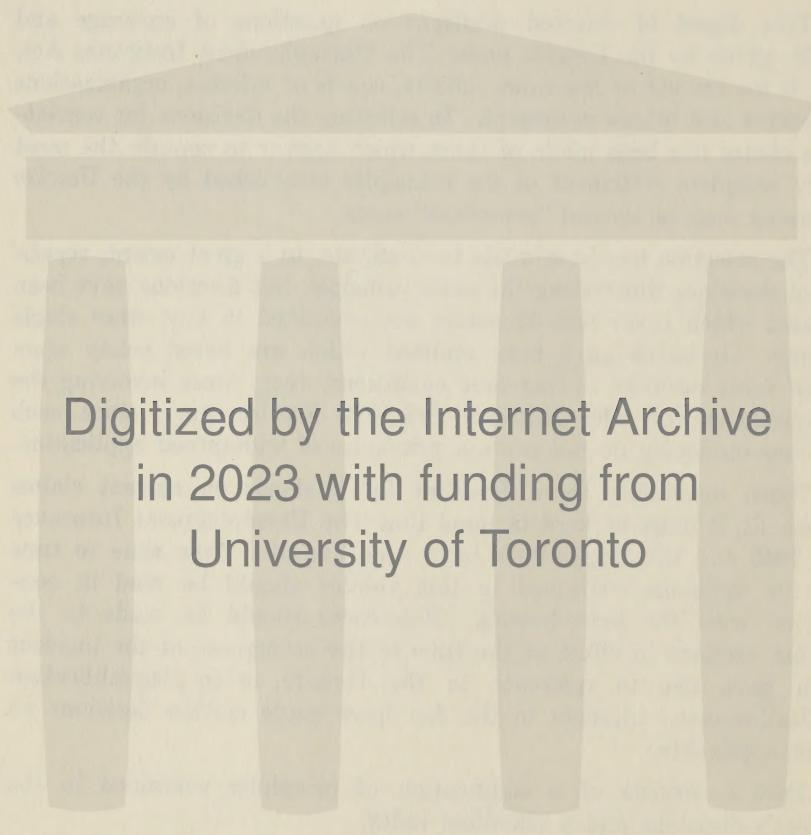
The selection has been made to eliminate, to a great extent, repetition of decisions illustrating the same principle, but decisions have been included which cover related points not contained in any other single decision. Decisions have been omitted which are based solely upon sets of facts peculiar to war-time conditions, (e.g., those involving the administration of The National Selective Service Act), since such decisions obviously do not contain principles of widespread application.

When examining these decisions for guidance on current claims for benefit, it must be kept in mind that The Unemployment Insurance Act, 1940 and the Regulations have been amended from time to time and the decisions contained in this volume should be read in conjunction with the amendments. References should be made to the relevant sections in effect at the time of the occurrence of the incident which gave rise to reference to the Umpire, or to disqualification or disallowance. Changes in the Act have made certain decisions no longer applicable.

Part I consists of a codification of principles contained in the Umpire's decisions and a classified index.

Part II contains digests of the Umpire's Coverage and Benefit Decisions.

Part III contains applicable sections of the Unemployment Insurance Act and Regulations.



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## INTRODUCTION

The Unemployment Insurance Act became law on August 7, 1940, and insurance contributions became payable on July 1, 1941. The Act, with its amendments, provides for compulsory insurance against unemployment of every person engaged in an employment described in Part I of the First Schedule to the Act unless he is employed in an employment specifically excepted.

Under this Act and the Regulations passed thereunder, certain powers are conferred upon the statutory authorities, i.e., the insurance officers, the courts of referees, and the Umpire, to adjudicate upon the entitlement to benefit of unemployed insured persons. The functions of such authorities are definitely quasi-judicial in character. The establishment of courts of referees and the appointment of an Umpire (by the Governor-in-Council from amongst the judges of the Exchequer Court of Canada and of the Superior Courts of the Provinces of Canada) as a final arbiter, are for the added protection of insured persons.

The Unemployment Insurance Fund, to which employers, employees, and the Dominion Government are contributors, is solely for the purpose of protecting insured persons against involuntary unemployment for limited periods of time. It is definitely a trust fund established for a specific purpose and as such is safeguarded against claims for benefit arising out of voluntary unemployment and against fraudulent claims.

The Act provides that all claims for benefit and all questions arising in connection with such claims shall be submitted to an insurance officer for his decision. It also provides for the submission of claims to courts of referees either by way of reference by insurance officers or appeal by insured persons from decisions of insurance officers. In certain instances, appeals may be taken to the Umpire.

An insurance officer, a court of referees or the Umpire may revise his or its decision on the basis of new facts; without new facts a decision, once given, remains in effect.

The decision of the Umpire on any appeal is final and is not subject to appeal to any court.

### **Scope of Unemployment Insurance Coverage, Determination of Coverage Questions, and Appeals**

#### ***Scope of Unemployment Insurance Coverage***

The scope of coverage under the Unemployment Insurance Act is defined by a series of limiting conditions which have to be fulfilled by persons and employments if they are to be included in the insurance scheme. The fundamental limitation is that contained in Part I of the First Schedule to the Act, referred to in Section 13(1), the effect of which, broadly speaking, is to limit insurable employment to employment in Canada under a contract of service or apprenticeship.

Further limits are imposed by Part II of the First Schedule which enumerates certain employments which, though fulfilling the necessary conditions referred to above, are nevertheless excepted.

Of the employments originally excepted several were brought under the provisions of the Act by later amendments, e.g., transportation by water and by air, stevedoring, professional nursing (except on private duty), and lumbering and logging (with certain reservations). The principal employments still excepted are in agriculture, fishing, private domestic service, teaching, employment in non-profit hospitals and charitable institutions, permanent employment in the public service and salaried employment with earnings in excess of \$3,120 a year.

The Commission is given limited power to remove anomalies between classes of insured and non-insured employees where the nature of the work and the terms and conditions of service are similar, and is further empowered to exclude types of employment which are ordinarily adopted as subsidiary employment and not as the principal means of livelihood.

### ***Determination of Questions Concerning Coverage***

Section 45 of the Act provides that any question (1) as to whether an employment is such as to make a person insurable, or (2) as to who is the employer of an employed person, or (3) as to the rate of contribution payable under the Act, is to be decided by the Commission. It provides further that the Commission shall decide any question as to whether or not, for the purpose of obtaining an extension of the two-year period mentioned in the first statutory condition, a person was employed in excepted employment, or was employed in insurable employment in respect of which contributions were not payable, or was engaged in business on his own account.

In the ordinary course questions are decided by administrative rulings. These are arrived at in the light of decisions already given by the Commission and the Umpire on similar questions. If the inquirer is not satisfied with a ruling, he is entitled to ask for a formal decision by the Commission which will then be given.

An application for a formal decision must be made in such form and contain such particulars as are satisfactory to the Commission. Upon its acceptance of an application, the Commission sends copies thereof to any other parties having an immediate interest in the decision and sets a time limit for the filing of particulars and representations by such parties. A hearing is granted, if requested, and may be held in any case if considered advisable by the Commission. The decision is given in writing and copies are sent to the applicant and to any interested parties who have filed representations.

If a claimant wishes to obtain a formal decision of the Commission on a question of coverage for purposes of extension of the two-year period, he must make an application within twenty-one days of the date on which the decision of the insurance officer was communicated to him, unless the Commission, for special reasons, extends this time limit.

### ***References to the Umpire***

The Commission may, if it thinks fit, refer any of the questions mentioned in Section 45 of the Act to the Umpire for his decision. The procedure for the hearing of appeals and references is identical.

### ***Appeals to the Umpire***

Any person aggrieved by a decision of the Commission on any of the questions mentioned in Section 45 of the Act may appeal to the Umpire.

All appeals to the Umpire must be made within six months of the date on which the decision of the Commission was communicated to the interested party or within such longer period as the Umpire, for special reasons, may allow.

Notice of the appeal is sent to any other parties having an immediate interest in the disposition of the appeal, stating a time limit for the filing of observations and representations. Hearings may be held by the Umpire in the same manner as by the Commission. The Umpire's decision is given in writing and copies thereof are sent by the Commission to the appellant and to any other interested parties who have made representations.

### **Functions of Insurance Officers, Courts of Referees and the Umpire in connection with Claims for Benefit**

#### ***Insurance Officers***

All national employment offices, established by the Commission in centres where the industrial population warrants, and referred to herein-after as "local offices", come under the jurisdiction of five regional offices located at Moncton (Maritimes), Montreal (Quebec), Toronto (Ontario), Winnipeg (Prairies), and Vancouver (Pacific). Adjudication is performed by insurance officers in thirty-six of the larger local offices.

When a claim for benefit is received at a local office, verification of the claimant's statements regarding his reasons for separation is obtained from his employers of the last six weeks, and any other person able to supply accurate information. The number and rate of his contributions to the Fund during the last five years are obtained and this information, with the comments of the local office, is then forwarded to the insurance officer for his decision.

An insurance officer has no jurisdiction until a claim for benefit has been submitted to him. He examines the claim and all questions arising in connection therewith and, if he is satisfied that the statutory conditions have been fulfilled, he declares that a benefit year has been established. If he is of the opinion that the statutory conditions have not been fulfilled, he either declares that a benefit year has not been established, on the ground that one or more of the statutory conditions have not been fulfilled, or refers the claim (if practicable within fourteen days of the date on which it was submitted to him for examination) to a court of referees for adjudication.

Even though a benefit year has been established the insurance officer, if he is not satisfied that the conditions precedent for receipt of benefit have been proved (i.e., that the claimant is unemployed, capable of and available for work, and unable to obtain suitable employment) or if he is of the opinion that a claimant is otherwise disqualified from receiving benefit, will declare the claimant to be disqualified for so long as the conditions precedent remain unproven or for a period not exceeding six weeks, as the case may be, or will refer the claim (if practicable

within fourteen days of the date on which it was submitted to him for examination) to a court of referees for adjudication. However, a disqualification for loss of employment due to a labour dispute lasts for so long as the stoppage of work continues.

A claimant who has been notified that a benefit year has not been established or that he has been disqualified from receiving benefit may, within twenty-one days from the date on which the decision is communicated to him, appeal to a court of referees; this time limit may, for special reasons, be extended by the Commission.

If an insured person proves that he was, during any period falling within the two years mentioned in the first statutory condition, incapacitated for work by reason of some specific disease or bodily or mental disablement, an extension may be granted by the insurance officer. An appeal from such decision shall lie to a court of referees.

### **Courts of Referees**

A court of referees is composed of a chairman who is appointed by the Governor-in-Council and of one or more members representing employers and an equal number of members representing insured persons. Sixty-eight panels of members have been established by the Commission at points where the number of appeals has indicated that they are required. Members representing employers are appointed after consultation with employer organizations, and those representing insured persons are appointed after consultation with representative organizations. The chairmen, numbering seventy-four, are chosen because of their impartiality and knowledge of industrial relations.

The term of office of each member is for such period as the Commission may think fit. No person may sit as a member of a court during the consideration of a claim in which he is or has been a representative of the claimant, or by which he is or may be directly interested, or in which he has taken any part on behalf of an association, or as an employer, or as a witness, or otherwise. A chairman may hold a session of the court in the absence of any or all members, provided that the consent of the claimant has been obtained in writing.

Chairmen and members of the courts are remunerated for their services. Remuneration may be paid also to claimants if they attend before the courts at the direction of the chairman, and to witnesses if they attend at the chairman's request.

Everything is done by the courts of referees to make the sessions as informal as possible. Witnesses may not be subpoenaed, nor may evidence be taken under oath.

The functions of the court are clearly defined in paragraph I-608 of the Insurance Manual, which reads as follows:

"The functions of a court of referees are to give decisions on all claims for benefit and any question or questions arising in connection with claims for benefit, which are referred to it by insurance officers, and any appeals made by claimants against decisions rendered by insurance officers under Section 55 of the Act. References to claims for benefit shall be construed as including references to questions arising in relation to such claims, and references to

action on a claim shall be construed as including references to determining a question in favour of or adversely to a claimant. (See Section 66 of the Act.)"

A claim for benefit comes within the jurisdiction of a court of referees only after it has been referred to the court by an insurance officer or after a claimant has appealed from an insurance officer's decision. The court may consider only the claim brought before it, and has no authority to alter a decision given on the claim at an earlier date, when the insurance officer had already decided that the claimant was entitled to benefit, and when such decision had not been before it previously. Where two or more questions are referred or appealed to a court of referees the court should render a decision on each question.

### **The Umpire**

A claim comes within the jurisdiction of the Umpire by way of an appeal from a decision of a court of referees. The right of appeal is granted to any of the following:

- (1) the insurance officer in any case;
- (2) the association of employed persons of which the claimant is a member, in any case;
- (3) the claimant
  - (a) without leave of the chairman of the court of referees in any case in which the decision of the court was not unanimous, and
  - (b) with such leave in any other case.

When leave to appeal to the Umpire is desired, the claimant must apply within twenty-one days of the date on which the decision of the court was communicated to him. His application for leave must be submitted over his signature. When completed as to his reasons for appeal, date and address, the application must be forwarded to the local office and the latter, in turn, will send it to the chairman.

The chairman must, within fifteen days of receipt of the application, notify the insurance officer, in writing, of his decision regarding the granting of leave to appeal, and the insurance officer will advise the claimant in writing.

All appeals to the Umpire must be made within six months of the date of the decision of the court of referees, or within such longer period as the Umpire, for special reasons, may allow.



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**PART I**

**CODE OF PRINCIPLES AND CLASSIFIED INDEX**

**COVERAGE AND BENEFIT**

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## PART I

### CODE OF PRINCIPLES AND CLASSIFIED INDEX

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## CODE OF PRINCIPLES AND CLASSIFIED INDEX

### COVERAGE

#### **Contract of Service or Apprenticeship**

##### ***Non-industrial employment insurable***

*HELD:* That a stenographer employed under contract of service in a law office is in insurable employment, not being employment specified as excepted and it is not necessary, in order to be employed in insurable employment, that the employee be employed in an industrial organization. **CUC-3**

##### ***Not employed***

*HELD:* That a person performing household tasks and caring for her mother with no remuneration other than maintenance is not engaged in employment within the meaning of Part I of the First Schedule to the Act. *Held* therefore that such services do not constitute excepted employment for the purpose of extension of the two-year period. **CUC-10**

*HELD:* That a married woman who while living with her father assists him in his business, with no definite hours of work and with no remuneration other than maintenance, is not engaged in employment within the meaning of Part I of the First Schedule to the Unemployment Insurance Act. *Held* therefore that such services do not constitute excepted employment for the purpose of extension of the two-year period. **CUC-11**

#### ***Student-at-law***

*HELD:* That a student-at-law is under a contract of apprenticeship and when remunerated for services performed under this contract is included in the class of persons employed in insurable employment. **CUC-13**

#### **Excepted Employment**

##### ***Domestic service***

*HELD:* That janitors and handymen employed by the trustee of an estate in the care of houses and apartment buildings managed by the trustee are not employed in domestic service and therefore, regardless of whether or not the trustee is engaged in a trade or business carried on for the purpose of gain, are not employed in excepted employment. **CUC-7**

##### ***Municipal authority***

*HELD:* That the expression "municipal authority" is not restricted to a municipality or municipal corporation but includes other agencies thereof and an employee of a municipal Hydro-Electric Commission is an employee of a "municipal authority" and, upon certification satisfactory to the Unemployment Insurance Commission that his employment is, having regard to the normal practice of the employment, permanent in character, is employed in excepted employment. **CUC-1**

##### ***Professional nurse***

*HELD:* That a person employed as a dental nurse, who is not a graduate of any accredited school of nursing and who has had no previous experience in nursing, is not employed as a professional nurse for the sick and therefore is not in excepted employment. **CUC-6**

***Wage ceiling***

*HELD:* That an employee in receipt of a salary of \$100 per month plus commission, whose earnings for the current year cannot be estimated with any reasonable degree of certainty, and whose actual earnings for the preceding year in the same employment at the same rate of remuneration did not exceed \$2,000, is included among the classes of persons employed in insurable employment.

CUC-4

**BENEFIT****ANTEDATING OF CLAIMS****Circumstances beyond claimant's control**

*HELD:* That to establish good cause for antedating a claim for benefit a claimant must show that he was prevented from attending at a local employment office by conditions over which he had no control. CUB-116, CUB-6, CUB-130

*HELD:* That a claimant who was at sea for two weeks was not available for employment during this time as he was not in a position to accept suitable employment nor could any office or official of the Commission either in Canada or the U.S.A. have communicated with him to offer him any suitable employment which might have been available. Antedating of the claim to cover the two-week period was not allowed.

CUB-280, CUB-295

**Claimant notified of his right to claim benefit**

*HELD:* That it is the responsibility of the insured person to make his claim for benefit and that no antedating is warranted when a claimant was advised of his rights but made no claim for benefit until two months later.

CUB-32, CUB-65, CUB-395

**Expected to return to former employment or to obtain other employment**

*HELD:* That a claimant who deliberately failed to exercise his right to make a claim for benefit because he expected, at an early date, either to resume work with or to obtain new employment from his former employer, has not shown good cause for delay in making a claim for benefit and is not entitled to have his claim antedated. CUB-409, CUB-12, CUB-102, CUB-116, CUB-130, CUB-138

**Failure to inquire about right to claim benefit**

*HELD:* That it is the duty of an insured person, immediately upon separation from employment, to call at a local office to ascertain his position in regard to his benefit rights. Negligence on the part of an insured person or ignorance of the provisions of the Act cannot be accepted as a valid reason for delay in filing a claim.

CUB-138, CUB-102

**Ignorance of the Act**

*HELD:* That ignorance or misunderstanding of the Act does not constitute good cause for delay in making a claim for benefit. CUB-99, CUB-32, CUB-50, CUB-52, CUB-102, CUB-130, CUB-138, CUB-274, CUB-392

*HELD:* That a locomotive engineer, suspended from duty by his employer, did not have good cause for the antedating of his claim for benefit for a period of five weeks. Although there was a discrepancy between the stories told by the claimant and an officer of the Commission regarding what had taken place during the former's visit to the local office on January 31, 1947, the claimant had not presented himself again at the local office until March 3, 1947. He should have reported during this period to register for employment and to prove entitlement to benefit.

CUB-283, CUB-116

*HELD:* That a postal claimant who had made no endeavour, during a period of four months, to ascertain the nature of her rights and responsibilities under the Act, of which she was ignorant, had not shown good cause for delay in making claim for benefit. If she were genuinely seeking employment during this period she should have applied to the nearest local office.

CUB-286

**HELD:** That a claimant of foreign birth and not well versed in the English language had good cause for antedating a claim for benefit when it appeared that he could easily have misunderstood the pamphlet of instructions given to him by the local office, and that he had sought work with his former employer, who told him that it was not necessary for him to make a claim for benefit for the period in question. **CUB-6**

#### **Insurance book held by last employer**

**HELD:** That ignorance of the Act does not constitute good cause for antedating a claim for benefit. (Insurance book held by employer pending recall of the employee.) **CUB-392, CUB-102**

#### **Not advised of his right to claim benefit**

**HELD:** That it is not incumbent on the officers of the Commission to notify or request an insured person to make a claim for benefit. It is the responsibility of the insured person to decide if a claim is to be filed. **CUB-52**

#### **Other conditions to entitlement must be fulfilled**

**HELD:** That the mere forwarding of a claimant's insurance book to the local office is no indication of a desire to register for employment and claim benefit. When a claimant refuses to sign the unemployment register for any week he forfeits his right to benefit for the period so covered and cannot be granted antedating of a subsequent claim to embrace the period during which he refused to sign the unemployment register. Leave to appeal to the Umpire should be given by a chairman of a court of referees only when it appears that a principle of importance is involved, or any other special circumstances, and the reason for granting such leave must be stated. **CUB-163**

#### **Partial or intermittent employment no bar to filing a claim—**

(see "Ignorance of the Act".)

#### **Residence outside of Canada**

**HELD:** That absence in the United States does not constitute good cause within the meaning of Section 13 of The Unemployment Insurance Benefit Regulations, 1947, for delay in making claim for benefit. **CUB-370**

### **APPLICATION MADE IN PRESCRIBED MANNER**

See "STATUTORY CONDITIONS"

### **AVAILABLE FOR WORK**

#### **Absence from home district**

**HELD:** That an insured person in receipt of benefit must be available for immediate call in the event of employment being available for him. A claimant who told the local office that he would not be in the local office area but in the United States on holiday for a two-week period, during which he failed to report to the local office, was not available for work. **CUB-218, CUB-280**

#### **Anticipation of other employment**

**HELD:** That a claimant's statement that she was not available for employment warranted a disqualification for non-availability. **CUB-7**

#### **"Available for work" interpreted**

**HELD:** That the claimant, an office clerk, who had worked on an evening shift during the previous sixteen months, was available for work even though, due to domestic reasons, she restricted her availability to evening work; availability 33301—2½

and suitability of employment are intimately linked and in many cases cannot be considered separately; no work had been offered to the claimant, and it was impossible to know whether or not she would refuse employment which was suitable in her case, the length of unemployment being just over a month.

CUB-30

**HELD:** That a student who had a history of part-time insurable employment, in which he was engaged after school hours, in the evenings and on weekends, and covering a prolonged period, is available for work under the same conditions.

CUB-96

**HELD:** That a high school student, who had contributed to the Fund as a full-time worker and who was later available only for part-time work for which there was but little demand, was not available for work.

CUB-347

**HELD:** That insured persons who live in, or on the outskirts of, a large industrial area, must be prepared to accept suitable employment anywhere within that area.

CUB-128

**HELD:** That a claimant's intention to establish himself in business on his own account did not justify leaving his employment voluntarily. While engaged in preparing to establish his own business he is not available for employment nor is he unemployed.

CUB-149

**HELD:** That a married woman, claiming benefit under the Unemployment Insurance Act, must prove, as any other claimant, that she is available for work. Availability for work implies being able, willing and ready to accept immediately suitable employment when offered.

CUB-371, CUB-171

#### **Capable—(see also CAPABLE OF WORK)**

**HELD:** That a local office was wrong in allowing a bed-ridden claimant who lived within easy access of the local office to make a claim for benefit by post. Personal registration is one of the first tests of capability and availability. A person who is confined to bed but who has the use of her hands is not in a position to meet the usually accepted tests of capability and availability.

CUB-111

**HELD:** (1) That a claimant who is capable of and available for work of a light nature has good cause for refusing to apply for a type of work which a physician has certified as not within the claimant's capability because of a surgical operation. (2) That the subsequent production of a medical certificate in this case is not a new fact but merely corroboration of a fact already considered by the court of referees.

CUB-267

**HELD:** That an aged and rheumatic claimant who was kept in his last employment as an act of charity must prove that he is capable of work before he may receive benefit. The duty of an insurance officer in determining the capability of an insured person arises only after he has made a claim for benefit. (CUB-267 referred to.)

CUB-338

**HELD:** That a claimant, handicapped by an impediment in his speech and by retarded mental development, was nevertheless capable of and available for work, since his record of employment showed that he had worked under such handicaps for several years.

CUB-408

#### **Disabled temporarily or permanently**

**HELD:** That a lithograph artist who, because of ill-health, was unable to perform any work outside of his own home, and whose doctor said that he should not be required to attend at the local office in his home city, was not available for work although his last employer was willing to send work to his home. He had not previously worked under the conditions outlined above. (CUB-111 referred to.)

CUB-281, CUB-338

#### **Domestic responsibilities or other personal circumstances**

**HELD:** That full-time employment in her registered occupation, after being employed only on Saturdays for a period of two months, was suitable employment for a widow with domestic responsibilities who had a pattern of part-time

employment; a claimant who restricts her availability to five hours' work per day for three or four days a week is not available for work; suitability of employment is a question of fact which varies for each person, and cannot be predetermined by a claimant's declaration that only certain types of work are suitable.

**CUB-48, CUB-24, CUB-30, CUB-39, CUB-61,  
CUB-67, CUB-78, CUB-105, CUB-128, CUB-129, CUB-133, CUB-136,  
CUB-171, CUB-192, CUB-220, CUB-222, CUB-234, CUB-256, CUB-282,  
CUB-371, CUB-407, CUB-411, CUB-424**

**HELD:** That a claimant who refused suitable employment because he was caring for an injured wife was properly disqualified for non-availability. It is desirable that a claimant who makes a statement about the physical condition of his family as a reason for a claim, should submit medical or other satisfactory evidence in support of such statement.

**CUB-183**

**HELD:** That a claimant who had left his employment in order to return to his home to make necessary preparations against cold weather had just cause for voluntarily leaving his employment but was not available for work during the period when he was thus occupied.

**CUB-331**

#### **Other business commitments**

**HELD:** That a claimant, seven months unemployed, who could not leave his home district to accept employment because he was preparing to engage in business on his own account, was not available for employment.

**CUB-166**

**HELD:** That a claimant is not available for work while engaged in building a home for himself during normal working hours.

**CUB-325**

#### **Proof of availability**

**HELD:** That a claimant may report to a local office other than the one at which his claim was made, when the second office makes no objection, although such procedure is contrary to regulations.

**CUB-35, CUB-111, CUB-311**

#### **Quarantined**

**HELD:** That a claimant who has been quarantined in his home on account of a contagious disease is not available for work during the period of the quarantine.

**CUB-186**

#### **Restricted area of employment**

**HELD:** That a person who claims benefit under the Act must be prepared to accept suitable employment. A claimant who will accept employment only where none is available, owing to the remote location of his home, has made himself not available for work.

**CUB-192, CUB-68, CUB-220, CUB-232,  
CUB-234, CUB-256, CUB-307, CUB-309, CUB-327, CUB-336  
CUB-349, CUB-407, CUB-411**

#### **Restricted sphere of employment**

**HELD:** That a married woman who had been employed on war work during the evening hours, and who, on the termination of this work, restricted her availability to the same work and the same hours of work, was not available for work; in such cases the issue would be clearer if suitable employment could be offered.

**CUB-61, CUB-24, CUB-30, CUB-172, CUB-361, CUB-407**

**HELD:** That a claimant with a history of full-time employment, who had been referred unsuccessfully to seven situations and who refused the next because he was available for temporary work only, was not available for work.

**CUB-29, CUB-39, CUB-133**

**✓HELD:** That work as a ward-aide at a salary of \$75 per month and one meal per day was suitable for a female tracer who had been unemployed for five and one-half months and who had previously earned \$152 per month. She was not available for work as she had unduly restricted her sphere of employment.

**CUB-317, CUB-302**

**HELD:** That employment to which a claimant is referred is not suitable employment if the wage rate is less than the minimum wage provided for by

provincial decree. A claimant is not available for work within the meaning of the Act when she restricts herself to part-time work in her usual occupation, working afternoons only with a certain minimum number of hours of work.

**CUB-424**

**Student attending school or college**—(see “Available for work” interpreted.)

#### **Transportation difficulties**

**HELD:** That a claimant is not available for work when she has been unemployed for sixteen weeks and alleges that she has lost the means of transportation formerly available to and from the nearest place of possible employment where she had previously been employed.

**CUB-79, CUB-106, CUB-115, CUB-259, CUB-327, CUB-346, CUB-425**

#### **Union relations**

**HELD:** That a claimant, a union member, who stated that he was not available for work because of the existence of a strike at his last place of employment, was not available on the day on which he made his claim for benefit, and that due to a continuation of the strike he continued to be not available for work.

**CUB-320**

### **CAPABLE OF WORK**

#### **“Capable” interpreted**

**HELD:** That a local office was wrong in allowing a bed-ridden claimant who lived within easy access of the local office to make a claim for benefit by post.

Personal registration is one of the first tests of capability and availability. A person who is confined to bed but who has the use of her hands is not in a position to meet the usually accepted tests of capability and availability.

**CUB-111**

**HELD:** (1) That each claim where the question is one of capability or availability when related to pregnancy must be considered on its own merits. The physical condition, willingness to work, the degree of capability and the nature of employment must be considered. (2) A conclusive medical certificate filed by the claimant that she was unable to work is acceptable evidence upon which to base a disqualification.

**CUB-257, CUB-267**

**HELD:** That a claimant whose usual occupation was that of clerk (general), and who was registered for employment in that occupation, was not capable of work when he refused to apply for a clerical position because of a serious injury to his right wrist which, according to the medical evidence, prevented writing.

**CUB-319, CUB-281**

**HELD:** That an aged and rheumatic claimant who had been kept in his last employment as an act of charity must prove that he is capable of work before he may receive benefit. The duty of an insurance officer in determining the capability of an insured person arises only after he has made a claim for benefit. (CUB-267 referred to.)

**CUB-338**

**HELD:** That a claimant, handicapped by an impediment in his speech and by retarded mental development, was nevertheless capable of and available for work, since his record of employment showed that he had worked under such handicaps for several years.

**CUB-408**

#### **Pregnancy**

**HELD:** That, as a general rule, a claimant who applies for an extension of the two-year period on account of incapacity before, during, and after childbirth may be granted an extension of twelve weeks, (for six weeks before and six weeks after childbirth).

**CUB-184**

### **CONDITIONS PRECEDENT**

*See “UNEMPLOYED”, “CAPABLE OF WORK” and “AVAILABLE FOR WORK”*

## CONTRIBUTIONS

*See "STATUTORY CONDITIONS"*

## COURTS OF REFEREES

### **Adequacy of notice of hearing given to interested parties**

*HELD:* That employment as a kitchen helper was suitable for a retired railroad section foreman who had been unemployed for five and one-half months; the claimant, who lived in a hamlet having a population of approximately fifty persons, was not available for work as he refused to accept work away from home, stating that his domestic responsibilities were of such a nature that he had to be at home every night. The Umpire also dealt with an allegation that insufficient notice of the hearing before the court of referees had been given.

**CUB-309**

### **Constitution of court objected to**

*HELD:* That the sales representative of the claimant's ex-employer was found to be eligible to sit on the court of referees.

**CUB-295**

### **New facts**

*HELD:* (1) That a claimant who is capable of and available for work of a light nature has good cause for refusing to apply for a type of work which a physician has certified as not within the claimant's capability because of a surgical operation. (2) That the subsequent production of a medical certificate in this case is not a new fact but merely corroboration of a fact already considered by the court of referees.

**CUB-267**

### **Permission of chairman to appeal**

*HELD:* That a chairman of a court of referees must not grant leave to appeal to the Umpire except in a case in which there is a principle of importance involved or where special circumstances warrant an appeal.

**CUB-113,  
CUB-163, CUB-176**

*HELD:* That a chairman of a court of referees should be extremely careful in granting leave to appeal.

**CUB-188, CUB-163, CUB-232**

### **Right of court to deal with a question not previously dealt with**

*HELD:* That a court of referees may hear facts which were not brought to the attention of the insurance officer, but these facts must be relevant to the question submitted to the court. Under section 66(1) its decision may cover all questions arising in relation to such claim as laid before the insurance officer.

**CUB-396**

### **Umpire's decisions should be followed by courts of referees**

*HELD:* That it is essential to the proper functioning of the Act that decisions of the Umpire, where applicable, should be followed by courts of referees.

**CUB-222, CUB-244, CUB-407**

## DEPENDENCY

### **Attendance of dependent son at college**

*HELD:* That the claimant was entitled to benefit at the dependency rate under section 31(2) of the Act while his twenty-year-old son was a resident student at an agricultural college. The period of the son's absence from home is one which comes within the meaning of the temporary absence suggested by section 2(3)(a) of The Unemployment Insurance Benefit Regulations, 1947.

**CUB-372**

**Husband of claimant unemployed**

*HELD:* That in order to receive benefit at the dependency rate a claimant must show continuity of the dependency status to a degree such that its genuineness may not remain doubtful. **CUB-403**

**Receipt of old age pension or mother's allowance**

*HELD:* That a claimant is not entitled to the dependency rate of benefit if he but partially supports his mother (old age pensioner) whom he claims as a dependent. **CUB-219**

*HELD:* That the Act requires that a dependent brother must be wholly dependent and one who is partially maintained by his mother's allowance cannot qualify as a dependent of his claimant brother. **CUB-223**

**DISQUALIFICATION PERIOD****Period limited to duration of employment lost**

*HELD:* That a claimant who has voluntarily left non-insurable employment without just cause is subject to disqualification therefor; the principle underlying the Act is that the risk insured against is the risk of involuntary unemployment; a person is disqualified for the period of employment which has been lost, up to a maximum period of six weeks, if his unemployment is brought about by his own actions. **CUB-56**

**Reduction of period justified**

*HELD:* That fear of contracting a contagious disease, where no foundation for the fear existed, was not just cause for voluntarily leaving employment, but that real belief in the existence of danger constituted extenuating circumstances. **CUB-27**

*HELD:* That where the question at issue is one of fact, and the claimant appears in person, a court of referees is in the best position to make a decision on the evidence presented, and that a worker in a munition industry, working at other than her usual occupation, after three months of unemployment, should have less than the maximum period of disqualification when she refused to apply for work in her usual occupation at a wage reduction of one-third of her last wage. **CUB-44**

*HELD:* That an employee who refused a reasonable request to work overtime and was dismissed when she failed to give a satisfactory explanation for the refusal, lost her employment by reason of her own misconduct. Working overtime is a recognized practice in industry. Extenuating circumstances warranted a reduction in the period of disqualification. **CUB-332**

**Reduction of period not justified**

*HELD:* That a reduced period of disqualification imposed by a court of referees was not warranted when it appeared that there were no extenuating circumstances and that the court had reduced the period through confusing the points at issue. **CUB-42**

**Unstated portion of a week**

*HELD:* That a claimant who requested part-time work and who refused to apply for either part-time or full-time suitable employment was not available for work. A decision which disqualifies for three unstated days in each week is erroneous. **CUB-282**

**EXTENSION OF TWO-YEAR PERIOD**

*See "STATUTORY CONDITIONS"*

**FIRST BENEFIT YEAR**

*See "STATUTORY CONDITIONS"*

### HOLIDAYS RECOGNIZED AS SUCH

*See "UNEMPLOYED"*

### LABOUR DISPUTE

#### Directly interested in labour dispute

*HELD:* That a claimant who has lost employment because of a stoppage of work due to a labour dispute must personally prove his right to relief from the disqualification which is provided for in the Act. The fact that insured persons belong to another union or to no union does not *ipso facto* make them parties without an interest in the labour dispute. **CUB-85, CUB-87, CUB-150, CUB-179, CUB-191, CUB-412, CUB-423**

*HELD:* That the fact that a claimant is not a union member does not *ipso facto* make him a party without interest in a labour dispute. Moreover it is immaterial whether this interest is adverse or not. When the future working conditions of a claimant stand to be affected by the outcome of a labour dispute, he is directly interested therein within the meaning of section 39 of the Act. (CUB-191 referred to.) **CUB-423, CUB-85, CUB-87, CUB-150, CUB-179, CUB-422**

#### Grade or class of workers

*HELD:* That, in a labour dispute, the words "grade or class of workers" refer to the industrial classification of the workers, and not to their classification as union or non-union members. A worker who was unable to enter his employer's premises because of the activity of a picket line, and who was directly interested in the labour dispute which caused a work stoppage, was subject to disqualification for so long as the stoppage continued. **CUB-191, CUB-225, CUB-342**

#### "Labour dispute" interpreted

*HELD:* That the issuance of notices of the expiration of a bargaining agreement accompanied by proposals for the modification of conditions of employment, the insistence by the union on the acceptance of the modifications, the resistance by the employer against such acceptance, and the concerted action of the employees in ceasing work, are obvious indications that a labour dispute exists. A claimant, who lost his employment by reason of such a stoppage of work, is considered to have lost his employment by reason of a stoppage of work due to a labour dispute within the meaning of section 39 of the Act. **CUB-379, CUB-190, CUB-412**

*HELD:* (1) That the insistence by one party on acceptance of certain conditions of work at the factory, namely, the existence of a union, and resistance to the same by the other party—insistence and resistance which are manifested in turn by negotiations, strikes, picketing and lock-out—constitute evidence that a labour dispute exists, as the various incidents or groups of incidents bear direct relationship. **CUB-400**

*HELD:* That a sit-down strike of employees and a concerted refusal to return to work, in an endeavour to hasten the completion of a bargaining agreement, followed by the discharge of the employees, constitutes a work stoppage brought about by a labour dispute. The incident should not be treated as misconduct. **CUB-110**

#### Member of another union involved

*HELD:* That the fact that an insured person belongs to another union or to no union does not make him a party without interest in the outcome of the labour dispute. That it may be presumed that if the issue involved in the labour dispute which caused the work stoppage would directly affect the hours of work or wages of the claimant, he is directly interested in the dispute even if he stands to lose and not to gain by the outcome. (Rand report dealt with in this decision.) **CUB-86, CUB-287**

#### Misconduct

*HELD:* That a sit-down strike of employees and a concerted refusal to return to work, in an endeavour to hasten the completion of a bargaining agreement,

followed by the discharge of the employees, constitutes a work stoppage brought about by a labour dispute. The incident should not be treated as misconduct.

**CUB-110, CUB-141**

#### **Non-union member**

*HELD:* That there was no relief from disqualification for having lost his employment by reason of a work stoppage caused by a labour dispute, for a claimant who did not belong to the union involved (the strike vote having been taken some time before he entered this employment), as he was included in the bargaining agreement and was directly interested. **CUB-179, CUB-191**

#### **Participating in labour dispute**

*HELD:* That a union member who ceased work in sympathy with members of another union who had struck against their mutual employer, and who refused to cross a picket line in order to work, became thereby a participant in the labour dispute and was disqualified under section 39(1). **CUB-287, CUB-110**

#### **Picket duty**

*HELD:* That when strike benefit was paid to striking union members who voluntarily picketed the employer's plant, (the stoppage of work due to a labour dispute having ceased), and such strike benefit was not paid as remuneration for picketing, the union members could not be considered to have been under a contract of service with the union, and were unemployed. **CUB-311**

#### **Refusal to accept vacancy arising out of labour dispute**

*HELD:* That the relief from disqualification provided by section 43 of the Act applies only to refusal to accept employment and not to leaving employment which has been accepted with knowledge of the conditions thereof. (See also CUB-190 and CUB-287). A compositor who found employment with a publishing company and left voluntarily three months afterward, claiming that he did not want to act as a strike-breaker and did not realize, when he accepted the employment, what his situation would be in relation to future prospects of work and union membership, was disqualified for having left his employment voluntarily without just cause. **CUB-208**

#### **Regularly engaged in some other occupation during stoppage of work**

*HELD:* That a claimant who was self-employed repairing motor cars for three weeks immediately following his loss of employment due to a stoppage of work caused by a labour dispute, having previously followed this occupation in his spare time while employed, and whose self-employment then terminated, had not become regularly engaged in some other occupation within the meaning of section 39(1) of the Act. **CUB-285**

#### **Removal to another locality does not relieve from disqualification**

*HELD:* That a claimant who had lost his employment by reason of a work stoppage caused by a labour dispute was not relieved of disqualification merely because he moved to another locality where he made a claim for benefit. **CUB-207**

#### **Stoppage of work**

##### **Anticipation of stoppage of work**

*HELD:* That a claimant who has received notice of separation, and who lost his employment by reason of a work stoppage caused by a labour dispute which occurred prior to his expected date of separation, is subject to disqualification for as long as the work stoppage continues. **CUB-87**

*HELD:* That voluntary separation in anticipation of a work stoppage caused by a labour dispute did not relieve a claimant of disqualification for so long as the stoppage continued. **CUB-157, CUB-244**

*HELD:* That a claimant laid off because of a cancellation of orders due to a strike threat should be disqualified as from the day on which the stoppage

of work actually commenced, such disqualification to last for the duration of the stoppage of work caused by the labour dispute; the claimant is entitled to benefit from the day he was laid off until the general stoppage of work occurred.

CUB-417

***Disqualification may continue after termination of dispute***

**HELD:** That the settlement of a labour dispute does not imply that the stoppage of work due to the labour dispute has ceased. Disqualification continues in effect up to the date on which a reasonable resumption of work takes place.

CUB-144

***Disqualification may not be imposed after stoppage has terminated***

**HELD:** That a claim for benefit made after the cessation of a work stoppage caused by a labour dispute is not subject to adjudication under the section of the Act which deals with labour disputes.

CUB-123

***Disqualification for duration of stoppage even for temporary employee***

**HELD:** That the fact that a claimant would have lost his temporary employment before the cessation of the work stoppage caused by a labour dispute, did not relieve him of disqualification for so long as the stoppage continued.

CUB-152

***Method of determining end of stoppage of work***

**HELD:** That a work stoppage caused by a labour dispute at the premises of a newspaper publishing company ceased when the production of newspapers reached approximately 87 per cent of the number of copies produced prior to the work stoppage.

CUB-200

***Temporarily absent at time of stoppage***

**HELD:** That a claimant, who was directly interested in a labour dispute which caused a stoppage of work at the plant where he was employed, lost his employment because of such stoppage of work, although he was absent from work on sick leave at the time the stoppage occurred. (CUB-85, CUB-86 and CUB-87 referred to.)

CUB-154

**HELD:** That a union member was not relieved from disqualification by reason of the fact that she was on vacation when a labour dispute resulted in a stoppage of work, although she would have returned to her employment upon conclusion of the vacation if the stoppage had terminated.

CUB-400

***Unable to enter plant during stoppage to obtain his tools***

**HELD:** That an insured person, who lost his employment because of a work stoppage due to a labour dispute in which he was directly interested, was not relieved of disqualification, although he was unable to obtain the tools of his trade which were locked in the struck plant. (CUB-85, CUB-86 and referred to.)

CUB-156

## MISCONDUCT

***Absence without leave***

***Caused by illness***

**HELD:** That intermittent absence without notifying the employer of the reason therefor is misconduct.

CUB-76

***Concerted refusal to work***

**HELD:** That a sit-down strike of employees and a concerted refusal to return to work, in an endeavour to hasten the completion of a bargaining agreement, followed by the discharge of the employees, constitutes a work stoppage brought about by a labour dispute. The incident should not be treated as misconduct.

CUB-110

***Wilful***

**HELD:** That a claimant who was discharged because he had left his employment during working hours, had gone to a hotel where he consumed liquor and dinner, and was thus absent for several hours, was rightly disqualified because

he had lost his employment on account of his own misconduct, even though he was accompanied by his foreman. **CUB-60**

**HELD:** That the claimant, a relief fireman on a ship, who signed on for a three-month period but who could have retained his employment had his conduct been satisfactory, had lost his employment at the end of that period by reason of his own misconduct within the meaning of section 41(1) of the Act. **CUB-376**

**HELD:** That a claimant who had been absent from work and who upon her return refused to give a reason for her absence and was consequently discharged, lost her employment by reason of her own misconduct within the meaning of section 41(1) of the Act. **CUB-390**

#### **Carelessness, negligence, mistake**

**HELD:** That a bar steward who smoked while serving customers, and who was responsible for a lack of cleanliness in the grill and for irregularities in the purchase of liquor, was discharged for misconduct. **CUB-333**

**HELD:** That a claimant whose services as a street car operator were retained despite his employer's knowledge that he was unsuited to the work, and who was subsequently discharged because he had had too many accidents, was not discharged for misconduct as it appeared that his conduct was due to inefficiency and that his carelessness was not deliberate and consequently would not amount to misconduct within the meaning of section 41(1) of the Act. **CUB-340**

**HELD:** That an arsenal employee who had matches in his pocket while he was in the arsenal Danger Area, was guilty of gross negligence which amounted to misconduct. **CUB-356**

#### **Connection between offence and employment**

**HELD:** That a claimant who assaulted his foreman after working hours and outside the employer's premises, because of the latter's report on the claimant's unsuitability for the type of work which he was performing, and who was discharged therefor, lost his employment by reason of his own misconduct. **CUB-203, CUB-101**

#### **Dangerous driving**

**HELD:** That a taxi-driver who lost his employment as a result of a conviction on a charge of dangerous driving while on duty, and whose licence was suspended for thirty days, was discharged for misconduct connected with his employment. **CUB-101**

#### **Dishonesty, theft and falsification**

**HELD:** That a salesman who sells goods which are the product of his employer's competitor, without the knowledge and consent of his employer, is guilty of misconduct. **CUB-410, CUB-26, CUB-198**

#### **Drinking**

**HELD:** That drinking liquor while on the job, after having been warned to discontinue this practice, constitutes misconduct within the meaning of the Act. A claimant who was discharged from his employment for such misconduct was rightly disqualified, even though his employer subsequently re-hired him. **CUB-229, CUB-26**

#### **Lateness repeated**

**HELD:** That persistent tardiness, after warning, is misconduct. **CUB-51**

#### **Offence occurring outside of working hours**

**HELD:** That claimant who assaulted his foreman, after working hours and outside the employer's premises, because of his report on the claimant's unsuitability for the type of work which he was performing, and who was discharged therefor, lost his employment by reason of his own misconduct. **CUB-203**

### **Proof of misconduct**

*HELD:* That where misconduct is given as the cause for separation from employment, the misconduct must be proven by the parties who make the allegation. Misconduct cannot be assumed, it must be conclusively proven before disqualification is imposed. **CUB-134, CUB-26, CUB-117, CUB-405**

### **Refusal to obey orders**

*HELD:* That misconduct is established when a claimant has refused to comply with the standard of work as set by an arbitrator, who has been appointed jointly by employer and employees and whose decision was to be binding on all parties. **CUB-161, CUB-53, CUB-159, CUB-189**

### **Refusal to work overtime**

*HELD:* That a workman who was considered by his employer to be the instigator of a petition asking for extra pay for overtime work, and who was discharged therefor, was not discharged for misconduct as the employer failed to prove his allegation. **CUB-228, CUB-332**

### **Union activity**

*HELD:* That solicitation of union membership during working hours, after warning to discontinue the practice, is misconduct. **CUB-28**

### **Unreasonable orders of employer**

*HELD:* That a claimant, employed as a cleaner at a bakery, who refused to carry out orders of the employer to move stock and was consequently dismissed, did not lose his employment by reason of his own misconduct, the orders issued being of an unreasonable nature. **CUB-159**

*HELD:* That misconduct is established when a claimant has refused to comply with the standard of work as set by an arbitrator, who has been appointed jointly by employer and employees and whose decision was to be binding on all parties. **CUB-161**

### **Violation of company rules and regulations**

*HELD:* That solicitation of union membership during working hours, after warning to discontinue the practice, is misconduct. **CUB-28**

*HELD:* That refusal of an employee to go to the superintendent's office when properly requested to do so, is misconduct, the request having followed several reprimands for breach of company rules. **CUB-53**

*HELD:* That a claimant who was discharged because he had left his employment during working hours, had gone to a hotel where he consumed liquor and dinner, and was thus absent for several hours, was rightly disqualified because he had lost his employment on account of his own misconduct, even though he was accompanied by his foreman. **CUB-60**

*HELD:* That there is a definite difference between an error of judgment and negligence or failure to comply with an important rule concerning the performance of the duties which a claimant has been hired to perform. Therefore non-observance by a locomotive engineer of rules relating to the speed of a train, with a resultant collision, constitutes misconduct within the meaning of the Act. **CUB-205**

*HELD:* That a bar steward who smoked while serving customers, and who was responsible for a lack of cleanliness in the grill and for irregularities in the purchase of liquor, was discharged for misconduct. **CUB-333**

*HELD:* That an arsenal employee who had matches in his pocket while he was in the arsenal Danger Area, was guilty of gross negligence which amounted to misconduct. **CUB-356**

### **NOTIFICATION OF EMPLOYMENT**

*See "SUITABLE EMPLOYMENT"*

**PART-TIME EMPLOYMENT***See "SUITABLE EMPLOYMENT"***PREGNANCY***See "CAPABLE OF WORK"***REASONABLE TIME***See "SUITABLE EMPLOYMENT—Offer of employment in"***REFUSAL OF EMPLOYMENT***See "SUITABLE EMPLOYMENT"***REPORTING AT ANOTHER LOCAL OFFICE***See "STATUTORY CONDITIONS"***SEASONAL REGULATIONS**

*HELD:* That seasonal workers, who claim benefit for a period of unemployment, whether it occurs during the on-season or the off-season, must, as all other claimants, fulfil the conditions laid down in the Act. Seasonal workers, however, who claim benefit for a period of unemployment which occurs during the off-season, must, in addition, satisfy the requirements of the Seasonal Regulations.

**CUB-421****SECOND OR SUBSEQUENT BENEFIT YEAR***See "STATUTORY CONDITIONS—Contributions"***SELF-EMPLOYMENT***See "UNEMPLOYED"***SIXTEEN YEARS OF AGE***See "STATUTORY CONDITIONS"***STATUTORY CONDITIONS****Claim for benefit must be made in the prescribed manner**

*HELD:* That a claimant may report to a local office other than the one at which his claim was made, when the second office makes no objection, although such procedure is contrary to regulations.

**CUB-35**

*HELD:* That failure to comply with the Act and the Regulations, such as failure to furnish required information by completing forms, e.g., the unemployment register, which is sent to postal claimants, is sufficient ground for disqualification.

**CUB-125**

*HELD:* That 72 hours since the last claim day should not be, in all cases, the maximum period allowed a claimant to ask for any remaining benefit days, as there is no provision which states the exact period of delay applicable to such cases. Each case must be dealt with on its own merits. A delay of four weeks was unreasonable when the claimant became re-employed but had ready access to the local office.

**CUB-241**

**Claimant must be at least sixteen years of age**

*HELD:* That contributions made erroneously in other than class "O", for an insured person under the age of 16 years, cannot legally establish his right to receive benefit.

**CUB-350**

**Contributions*****One hundred and eighty days' contributions***

*HELD:* That attendance at the local office in the hope of obtaining employment, but without registering for employment or making claim for benefit, is not sufficient ground upon which to base a valid claim for an extension of the two-year period which would be required in order to fulfil the first statutory condition.

**CUB-91**

***Sixty days' contributions***

*HELD:* That a claimant must have sixty daily contributions to his credit since the establishment of his previous benefit year before a further benefit year can be set up; the jurisdiction of the Umpire is limited to the interpretation of the Act.

**CUB-70, CUB-239, CUB-399, CUB-406**

**Extension of two-year period*****Applies to actual days in excepted employment***

*HELD:* That only the actual number of days on which non-insurable employment was engaged in can be used in calculating the number of days for which an extension of the two-year period may be granted.

**CUB-71**

***Incapacity must be specifically proved***

*HELD:* That any period of incapacity must be within the two-year period which immediately precedes the date of a claim before it can be used for extension of the two-year period.

**CUB-72**

*HELD:* That a claimant must be totally incapacitated for work of any type before an extension of the two-year period can be granted for incapacity.

**CUB-290, CUB-140, CUB-160, CUB-353**

***Other reasons cannot be accepted***

*HELD:* That attendance at the local office in the hope of obtaining employment, but without registering for employment or making claim for benefit, is not sufficient ground upon which to base a valid claim for an extension of the two-year period which would be required in order to fulfil the first statutory condition.

**CUB-91**

***Period spent in prison does not qualify***

*HELD:* That a period of time spent in a penitentiary may not be used as a basis for granting an extension of the two-year period.

**CUB-69**

***Reasonable period of time before and after pregnancy recognized***

*HELD:* That, as a general rule, a claimant who applies for an extension of the two-year period on account of incapacity before, during, and after childbirth may be granted an extension of twelve weeks, (for six weeks before and six weeks after childbirth).

**CUB-184**

**SUBSIDIARY EMPLOYMENT**

*See "UNEMPLOYED"*

**SUITABLE EMPLOYMENT****Absence from home**

*HELD:* That a claimant who, at the time of his being laid off due to shortage of work, was informed of the possibility of a vacancy occurring for a night

watchman, and who left his place of residence for two or three days due to the illness of his wife, during which period the position was filled, had not neglected to avail himself of an opportunity of suitable employment. **CUB-131**

#### **Change of occupation**

*HELD:* That employment as a window dresser and sales clerk was suitable employment for a stenographer who had been five months unemployed.

**CUB-38, CUB-180, CUB-204, CUB-270, CUB-297, CUB-319**

*HELD:* That employment as a sales clerk was suitable for a professional musician who had been unemployed for nearly three months, and who during the past thirty-eight months had been employed for only 284 days and had received benefit for 329 days. A claimant's employment history is an important factor in determining suitability of employment. Section 40(3) of the Act must apply to all insured persons. This claimant was unemployed although she continued practising daily and had to be at home during the daytime to await telephone calls for musical engagements. She was not available for employment because she insisted on working only as a professional musician.

**CUB-302**

#### **Conditions and wages less favourable**

*HELD:* That employment for an unskilled female factory worker, at 36 to 40 cents per hour, was unsuitable when her previous rate of wages was 51 cents per hour and the period of unemployment was thirteen days. **CUB-177**

#### **Conscientious objection**

*HELD:* That the holding of a religious belief which forbids working on a claimant's Sabbath day is good cause for refusing to apply for employment which requires work on that day. (Seventh-Day Adventist) **CUB-384**

#### **Distance of work from home—(See also "Available for work—Transportation difficulties")**

*HELD:* (1) That a distance of four miles and about one-half hour's travelling time to a place of employment is not unreasonable and is not a valid reason for the refusal of employment. (2) That night work as a janitress at the prevailing rate of pay is suitable employment for one who registered as a janitress and restricted herself to night work. **CUB-93**

*HELD:* That insured persons who live in, or on the outskirts of, a large industrial area, must be prepared to accept suitable employment anywhere within that area. **CUB-128, CUB-129, CUB-168**

*HELD:* That a married woman who lives with her husband in an area located at a considerable distance from suitable employment, and who refuses to move to an area where it can be had, is not available for work. **CUB-220**

#### **Domestic responsibilities**

*HELD:* That an insured person, to qualify for benefit, must be genuinely seeking employment and must be available to accept suitable employment without delay when offered. Where a married woman is the bread-winner of a family a broad interpretation may be allowed both as to the question of suitability of employment and as to the question of availability. A woman whose domestic responsibilities were such that she was unable to accept employment which involved working overtime, was held to be not available for employment. **CUB-171, CUB-24, CUB-64, CUB-67, CUB-133, CUB-172, CUB-192, CUB-232, CUB-243, CUB-305, CUB-425**

*HELD:* That the claimant, an office clerk, who had worked on an evening shift during the previous sixteen months, was available for work even though, due to domestic reasons, she restricted her availability to evening work; availability and suitability of employment are intimately linked and in many cases cannot be considered separately; no work had been offered to the claimant, and it was impossible to know whether or not she would refuse employment which was suitable in her case, the length of unemployment being just over a month. **CUB-30**

*HELD:* That full-time employment in her registered occupation, after being employed only on Saturdays for a period of two months, was suitable employment for a widow with domestic responsibilities who had a pattern of part-time employment; a claimant who restricts her availability to five hours' work per day for three or four days a week is not available for work; suitability of employment is a question of fact which varies for each person, and cannot be predetermined by a claimant's declaration that only certain types of work are suitable.

CUB-48

*HELD:* That a claimant who refused suitable employment because he was caring for an injured wife was properly disqualified for non-availability. It is desirable that a claimant who makes a statement about the physical condition of his family as a reason for a claim, should submit medical or other satisfactory evidence in support of such statement.

CUB-183

*HELD:* That a claimant, unemployed for six months, who refused to apply for suitable employment in his registered occupation in a city 180 miles distant, had refused without good cause, his domestic circumstances not being of such a nature as to prevent him from accepting.

CUB-139

#### **Duration of unemployment**

*HELD:* That a claimant is justified in refusing employment at a rate of wages lower than that paid by other employers in the same area for the same type of work; and that a period during which a claimant is taking a rest on medical advice is not to be regarded as a period of unemployment for the purpose of determining the suitability of an offer of employment.

CUB-33

*HELD:* That employment in an insured person's usual occupation, at a higher rate of wages than that which he had previously received, was not unsuitable only because the worker would have been required to leave home and go into lodgings until he had secured proper accommodation for his family, there being little prospect of his securing employment at his trade in his home city. Unemployment caused by a stoppage of work due to a labour dispute is not the unemployment contemplated by sub-section 3 of section 40 of the Act.

CUB-321

*HELD:* That various factors must be taken into consideration in order to determine suitability of employment, e.g., the nature of the claimant's usual occupation, the rate of wages previously obtained, the rate of wages offered, the degree of skill and experience acquired and required. A new type of employment for a semi-skilled worker, with a drastic reduction in wages, is not suitable after one month of unemployment.

CUB-66

*HELD:* That good cause for refusal to apply for a situation in suitable employment had not been shown by a claimant, unemployed for thirteen months, who refused to apply because she wished to complete a stenographic course.

CUB-120

*HELD:* That employment as a confectionery packer at a wage of 35 cents per hour, the prevailing wage for such work, was suitable employment for a woman who had been unemployed for more than seven months, and who had been formerly employed as a packer in a brewery at a wage of \$33.15 per week.

CUB-122, CUB-169

*HELD:* That bench work at current pay rate is suitable employment for an ex-rivetter after three months' unemployment, and inability to return home for noon meal of family does not justify refusal of referral.

CUB-64, CUB-38,

CUB-98, CUB-122, CUB-136, CUB-139, CUB-162, CUB-166, CUB-169, CUB-173, CUB-175, CUB-178, CUB-204, CUB-221, CUB-222, CUB-240, CUB-243, CUB-265, CUB-266, CUB-270, CUB-272, CUB-279, CUB-298, CUB-314, CUB-317, CUB-318, CUB-349, CUB-360

#### **Experience and skill**

*HELD:* That employment as a junior stenographer-typist at a salary of \$15 per week was unsuitable for a claimant who was a bilingual stenographer-typist with six years of experience and whose maximum salary had been \$110 per month.

CUB-357, CUB-38, CUB-317

**Failure to carry out written direction**

*HELD:* That the duty of a claimant in the matter of following up a prospect of employment, the general nature of which is furnished by the local office, is recited in the Act. One who refuses to apply for suitable employment of which he is notified is subject to disqualification. **CUB-185**

*HELD:* That a claimant, to whose home had been sent a registered written direction to attend at the local office for an interview in connection with employment, which direction had been received by his wife, and who failed to attend as directed, had without good cause failed to carry out a written direction. **CUB-345**

*HELD:* That a claimant who failed to call at the post office and did not receive a letter from the local office in time to comply with the written direction contained therein, was not relieved of disqualification for failure to carry out the written direction. **CUB-355**

*HELD:* That a married woman, out of the labour field for a period of approximately one year and in receipt of unemployment insurance benefit for over five months, and who had been notified of suitable employment at 4:30 p.m. and did not apply for it until noon the following day, when the position was filled, had neglected to avail herself of an opportunity of suitable employment. **CUB-385**

**Failure to return to his former position**

*HELD:* That an insured person who failed to report for work at the termination of a recognized holiday was properly disqualified for neglecting to avail himself of an opportunity of suitable employment. **CUB-401**

**Full-time employment offered to part-time worker**

*HELD:* That full-time employment in her usual occupation was suitable for a married woman who had worked part-time for the last six months of her most recent employment and who had been unemployed for three months. **CUB-279, CUB-24, CUB-39, CUB-48**

**Hours of work**

*HELD:* That employment in her usual occupation involving evening shift work is suitable for a married woman with domestic responsibilities who has been unemployed for a considerable length of time. **CUB-266, CUB-24, CUB-30, CUB-222**

*HELD:* That employment is not unsuitable only because the hours of work interfere with a claimant's domestic responsibilities. **CUB-305, CUB-271, CUB-418**

*HELD:* That employment as a stenographer and sales clerk at the prevailing salary of \$90 per month with a working week of 45 hours was suitable for a secretary, unemployed for five and one-half months, who had previously received \$33.46 for a working week of 36½ hours. **CUB-314**

**Housing accommodation**

*HELD:* That work away from home, at wages prevailing in the district, where housing accommodation was available, was suitable employment for a person who had been unemployed for four months. **CUB-98, CUB-321**

**Low wages**

*HELD:* That employment is not suitable if the rate of pay which is offered is less than that which is customarily paid by good employers or by agreement between employers and employees in the district. **CUB-89, CUB-132, CUB-173, CUB-188, CUB-360**

**Minor, seventeen years of age**

*HELD:* That a boy, 17 years old, should not be forced to leave his home if there is any hope of his procuring employment in his home town, and that he had good cause for refusing to apply for employment with a prospective employer from an outside point. **CUB-95**

**Neglect to avail**

**HELD:** That a married woman, out of the labour field for a period of approximately one year and in receipt of unemployment insurance benefit for over five months, and who had been notified of suitable employment at 4:30 p.m. and did not apply for it until noon the following day, when the position was filled, had neglected to avail herself of an opportunity of suitable employment.

CUB-385

**Notification of employment  
by telephone or notice board**

**HELD:** That communication by telephone between a local office and a claimant is a proper means of communication.

CUB-34

**HELD:** That notification of available employment must be adequate, and the employment must be suitable, before disqualification may be made for failure to apply. (Notification made by employer on notice-board in mass lay-off)

CUB-31

**Objection****By parents**

**HELD:** That work as an upstairs maid in a hotel was suitable employment for a single woman, aged 25 years, unemployed for six months, who had last been employed as a factory worker.

CUB-270

**To permanent employment**

**HELD:** That permanent employment is not, by reason only of its permanency, unsuitable for an insured person who desires temporary employment.

CUB-121

**To piece work**

**HELD:** That a claimant who was notified of suitable employment in her registered occupation, after  $2\frac{1}{2}$  months' unemployment, should have applied for the employment in order to ascertain its suitability instead of assuming otherwise.

CUB-255

**To prospective employer**

**HELD:** That probable lack of advancement in the position notified is not good cause for refusing to apply.

CUB-47

**HELD:** That a claimant who had been employed in a semi-skilled capacity by the one employer for approximately eighteen years had good cause for refusing a referral to the same employer as a common labourer on the ground that the employment was not suitable and that he had not the capacity to do it. The period of unemployment was more than seven months.

CUB-165, CUB-381

**HELD:** That a claimant's belief that she could not get along with a prospective employer, whose brother had previously discharged her from his employ, is not good cause for refusal to apply for suitable employment.

CUB-233

**To Sunday work**

**HELD:** That a woman who worked approximately three hours per day for seven days a week, for nearly two years, did not have just cause for leaving voluntarily merely because of a desire to avoid working for two hours on Sunday, no religious scruples being alleged, and Sunday work being not unusual in the occupation which was being followed by the claimant—chambermaid.

CUB-393

**Offer of employment in****Usual occupation in home district**

**HELD:** That insured persons who live in, or on the outskirts of, a large industrial area, must be prepared to accept suitable employment anywhere within that area.

CUB-128

**HELD:** That work in her usual occupation as a waitress with hours from 12 noon until 8:30 p.m., six days per week, at the prevailing rate of wages, was suitable employment for a married woman, unemployed for three months, whose two sons attended school.

CUB-271, CUB-44, CUB-233, CUB-418

*HELD:* That work as a hotel laundress is the same occupation as work as a laundress in a commercial laundry. **CUB-277, CUB-64**

*HELD:* That full-time employment in her usual occupation was suitable for a married woman who had worked part-time for the last six months of her most recent employment and who had been unemployed for three months. **CUB-279, CUB-424**

*HELD:* That a claimant who requested part-time work and who refused to apply for either part-time or full-time suitable employment, was not available for work. A decision which disqualifies for three unstated days in each week is erroneous. **CUB-282**

*HELD:* That immediate referral to the type of employment in which a claimant has worked for nineteen months previously is proper and a refusal of such referral justifies a disqualification. An expressed preference for another type of employment to which she has been accustomed does not affect the suitability of the employment offered. **CUB-289**

*HELD:* That employment as a junior stenographer-typist at a salary of \$15 per week was unsuitable for a claimant who was a bilingual stenographer-typist with six years of experience and whose maximum salary had been \$110 per month. **CUB-357**

*HELD:* That a claimant who refused to apply for employment in her usual occupation at the prevailing rate of pay in the district, because she was taking a commercial course at night and preferred to continue her studies rather than return to this type of work, has refused without good cause to apply for suitable employment. **CUB-419**

#### *Usual occupation away from home*

*HELD:* That work away from home, at wages prevailing in the district, where housing accommodation was available, was suitable employment for a person who had been unemployed for four months. **CUB-98, CUB-139, CUB-162, CUB-234, CUB-321, CUB-415**

*HELD:* That an unmarried man, unemployed for six weeks, had just cause for refusing to apply for suitable temporary employment away from home when it appeared that undue hardship would be caused his sick and aged relatives if he were required to leave home during the severe winter weather; he had worked in his last employment, in his home area, for fourteen years. **CUB-105**

*HELD:* That a married woman (separated) may, after being on benefit for five months, be referred to suitable employment outside of her home district, and a refusal to apply justifies a disqualification. **CUB-136**

#### *Other than usual occupation in home district*

*HELD:* That various factors must be taken into consideration in order to determine suitability of employment, e.g., the nature of the claimant's usual occupation, the rate of wages previously obtained, the rate of wages offered, the degree of skill and experience acquired and required. A new type of employment for a semi-skilled worker, with a drastic reduction in wages, is not suitable after one month of unemployment. **CUB-66, CUB-301**

*HELD:* That good cause for refusal to apply for a situation in suitable employment had not been shown by a claimant, unemployed for thirteen months, who refused to apply because she wished to complete a stenographic course. **CUB-120**

*HELD:* That part-time employment which required fifty minutes' street car travel each way, but which in other respects was suitable to the claimant, was not unsuitable, in view of the fact that it was the normal practice for persons in that area to travel this distance daily to and from employment. **CUB-129**

*HELD:* That a claimant who had been unemployed for many months had not good cause for refusing to accept employment in other than his usual occupation. He should have accepted the employment and should have given it a fair trial. **CUB-221**

*HELD:* That a married woman with family responsibilities, unemployed for over a year, who refuses suitable employment because it entails shift work, is not available for work. **CUB-222**

*HELD:* That a claimant who had been employed last at a rate of 74 cents per hour and who withdrew from the employment field for more than a year in order to be married, and who failed to apply for a situation in suitable employment which was in other than her usual occupation but at the prevailing rate of pay in the district for that type of work, had not shown good cause for failure to apply for a situation in suitable employment. Held also that the onus of finding employment for a claimant does not lie entirely upon the local office; a claimant must also be co-operative and must make every possible effort to obtain work. **CUB-383, CUB-38, CUB-46, CUB-173, CUB-175, CUB-178, CUB-240, CUB-253, CUB-270, CUB-272, CUB-297, CUB-298, CUB-302, CUB-314, CUB-317, CUB-318, CUB-335, CUB-360**

*HELD:* That a claimant, a skilled worker, who had been unemployed for a period of approximately 4½ months, must be prepared to accept employment of a kind other than his usual occupation at the prevailing rate of pay in the district. Subsection 3 of section 40 of the Act must necessarily apply to all insured persons including those who follow a highly skilled occupation. **CUB-394**

#### *Other than usual occupation away from home*

*HELD:* That a boy, 17 years old, should not be forced to leave his home if there is any hope of his procuring employment in his home town, and that he had good cause for refusing to apply for employment with a prospective employer from an outside point. **CUB-95**

*HELD:* That a married man, the father of five children, who lived in a village (population 650), where work was not available and who had been unemployed for five months, had refused, without good cause, to apply for suitable employment located fifty miles from his home, and was not available for work. He should have adjusted his domestic circumstances and should have been prepared to accept suitable employment. **CUB-349, CUB-68, CUB-256, CUB-309, CUB-327, CUB-351**

*HELD:* That a claimant, by insisting on accepting employment only in her own type of work, within the limits of a small community, where such employment seemed to be unobtainable, had restricted her sphere of availability to such an extent that she could not be considered as available for work; the provision of the Act relating to the suitability of employment in other than one's usual occupation must apply to all insured persons. **CUB-407, CUB-243, CUB-411**

#### **Part-time employment**

*HELD:* That part-time employment which required fifty minutes' street car travel each way, but which in other respects was suitable to the claimant, was not unsuitable, in view of the fact that it was the normal practice for persons in that area to travel this distance daily to and from employment. **CUB-129, CUB-279, CUB-282**

#### **Physical condition**

*HELD:* That a claimant who had been employed in a semi-skilled capacity by the one employer for approximately eighteen years had good cause for refusing a referral to the same employer as a common labourer on the ground that the employment was not suitable and that he had not the capacity to do it. The period of unemployment was more than seven months. **CUB-165**

*HELD:* (1) That a claimant who is capable of and available for work of a light nature has good cause for refusing to apply for a type of work which a physician has certified as not within the claimant's capability because of a surgical operation. (2) That the subsequent production of a medical certificate in this case is not a new fact but merely corroboration of a fact already considered by the court of referees. **CUB-267, CUB-33, CUB-301, CUB-319 CUB-335**

*HELD:* That allegations of nervous disability which would make the acceptance of otherwise suitable employment inadvertable must be substantiated by satisfactory evidence. **CUB-414, CUB-113**

#### **Preferred to go on vacation**

*HELD:* That a claimant who refused to apply for suitable employment, because she intended to go on vacation, was rightly disqualified for such refusal. **CUB-170**

#### **Referred to**

##### **Employment prior to filing claim for benefit**

*HELD:* That refusal of a referral to suitable employment which was made prior to the filing of a claim is a proper basis for disqualifying the claimant who files a claim within six weeks of the refusal. **CUB-75, CUB-108**

##### **Non-insurable employment**

*HELD:* That a claimant may be properly referred to insurable or non-insurable employment and a refusal of such referral justifies a disqualification if the employment is suitable. **CUB-3**

##### **Temporary employment**

*HELD:* That a claimant is justified in refusing temporary employment at a rate of wages lower than that paid by other employers in the same area for the same type of work; and that a period during which a claimant is taking a rest on medical advice is not to be regarded as a period of unemployment for the purpose of determining the suitability of an offer of employment. **CUB-33**

#### **Refusal or failure to apply**

*HELD:* That a married woman, out of the labour field for a period of approximately one year and in receipt of unemployment insurance benefit for over five months, and who had been notified of suitable employment at 4:30 p.m. and did not apply for it until noon the following day, when the position was filled, had neglected to avail herself of an opportunity of suitable employment. **CUB-385**

#### **Restricted area of employment**

*HELD:* That a miner who moved some distance from possible employment at the mines and refused to take employment which would interfere with the operation of his farm was not available for work. Surface work at a mine is suitable employment for a miner who is physically unfit for underground work. **CUB-68, CUB-349**

*HELD:* That an insured person in receipt of benefit must be available, and prepared to accept immediately suitable employment when offered. A claimant who insists on working only in the area in which she resides and where no work is available has so restricted her availability that she should be disqualified as being not available for employment. **CUB-234, CUB-220, CUB-336, CUB-407, CUB-411**

*HELD:* That a claimant who lived where there was little likelihood of finding employment and who had made no arrangements for transportation was not available for work, after having left one employment and refused another on account of the lack of transportation. **CUB-327**

#### **Restricted sphere of employment**

*HELD:* That the claimant, an office clerk, who had worked on an evening shift during the previous sixteen months, was available for work even though, due to domestic reasons, she restricted her availability to evening work; availability and suitability of employment are intimately linked and in many cases cannot be considered separately; no work had been offered to the claimant, and it was impossible to know whether or not she would refuse employment which was suitable in her case, the length of unemployment being just over a month. **CUB-30**

**HELD:** That a claimant, by insisting on accepting employment only in her own type of work, within the limits of a small community, where such employment seemed to be unobtainable, had restricted her sphere of availability to such an extent that she could not be considered as available for work; the provision of the Act relating to the suitability of employment in other than one's usual occupation must apply to all insured persons. **CUB-407, CUB-24, CUB-29, CUB-39, CUB-133, CUB-302, CUB-309, CUB-317, CUB-361, CUB-424**

#### **Temporary employment offered**

**HELD:** That employment as a sales clerk was suitable for a professional musician who had been unemployed for nearly three months, and who during the past thirty-eight months had been employed for only 284 days and had received benefit for 329 days. A claimant's employment history is an important factor in determining suitability of employment. Section 40(3) of the Act must apply to all insured persons. This claimant was unemployed although she continued practising daily and had to be at home during the daytime to await telephone calls for musical engagements. She was not available for employment because she insisted on working only as a professional musician. **CUB-302, CUB-33, CUB-351, CUB-402**

#### **Transportation difficulties—(See also "AVAILABLE FOR WORK—Transportation difficulties")**

**HELD:** That part-time employment which required fifty minutes' street car travel each way, but which in other respects was suitable to the claimant, was not unsuitable, in view of the fact that it was the normal practice for persons in that area to travel this distance daily to and from employment. **CUB-129, CUB-93, CUB-425**

#### **Union membership**

**HELD:** That a claimant had not established good cause for refusing to accept a situation in suitable employment when he alleged that acceptance of such employment would jeopardize his right to continue to be a union member, but failed to produce proof of such allegation. **CUB-54**

#### **Vacation preferable**

**HELD:** That a claimant who refused to apply for suitable employment, because she intended to go on vacation, was rightly disqualified for such refusal. **CUB-170**

#### **Wages**

**HELD:** That a claimant is justified in refusing employment at a rate of wages lower than that paid by other employers in the same area for the same type of work; and that a period during which a claimant is taking a rest on medical advice is not to be regarded as a period of unemployment for the purpose of determining the suitability of an offer of employment. **CUB-33**

**HELD:** That employment is not suitable if the rate of pay which is offered is less than that which is customarily paid by good employers or by agreement between employers and employees in the district. **CUB-89, CUB-39, CUB-42, CUB-44, CUB-46, CUB-59, CUB-66**

**HELD:** That work in a claimant's usual occupation is not suitable if the salary is less than that recognized by good employers, regardless of the period of unemployment. **CUB-132**

**HELD:** That employment to which a claimant is referred is not suitable employment if the wage rate is less than the minimum wage provided for by provincial decree. A claimant is not available for work within the meaning of the Act when she restricts herself to part-time work in her usual occupation, working afternoons only with a certain minimum number of hours of work. **CUB-424**

**Working for more than one employer**

*HELD:* That employment which is available upon registration and which results in a full week's work, although for different employers, is suitable for an experienced charwoman with a history of employment for a single employer, in a city with a population of 17,000. **CUB-343**

**Working on probation**

*HELD:* That employment as a night clerk in a hotel was suitable for a claimant whose doctor prescribed light work. Such employment, although on a trial basis and without remuneration, is employment within the meaning of the Act. **CUB-326**

**UMPIRE'S DECISIONS SHOULD BE FOLLOWED BY COURTS OF REFEREES**

*See "COURTS OF REFEREES"*

**UNEMPLOYED****Bonus paid after separation**

*HELD:* That one who receives his salary equivalent for three months after separation is not deemed to be unemployed during this period. **CUB-258**

**Business closed for alterations**

*HELD:* That a claimant who operates a fruit market has not ceased to be engaged in business on his own account while his store is closed for alterations. (CUB-264 and CUB-312 referred to.) **CUB-388**

**Casual employment**

*HELD:* That a casual worker is entitled to benefit for days on which he is unemployed, provided that on these days he has complied with all the other requirements for the receipt of benefit. **CUB-323**

**Commission salesman**

*HELD:* That a salesman, working on a commission basis with a drawing account, was not unemployed during a period when he could obtain no products for delivery against orders on hand, had not separated from his employment, and spent part of each day at his employer's premises in connection with the business. **CUB-195**

*HELD:* That a travelling salesman who voluntarily ceased work for the Christmas and New Year season was not unemployed during this period of time as there was no actual separation from employment. **CUB-275**

*HELD:* That a salesman whose earnings are paid by commission is not unemployed while he is devoting his time to selling, even though he may receive no commission until goods are delivered. **CUB-278**

**Establishing own business**

*HELD:* That an insured person who was occupied in endeavouring to secure orders for a business which was in the process of being organized was not unemployed. It was immaterial whether or not he received any remuneration or realized any profit. **CUB-359, CUB-149, CUB-166**

**Employment on own account*****Following an occupation as a  
Bus owner***

*HELD:* That the claimant who was and had been, for some time prior to his involuntary separation from employment as a compressor man in a colliery, the owner of a bus company but took no active part in the operation of the

company, and who resumed his position in the colliery after a temporary lay-off, had proved that he was unemployed during the lay-off. CUB-264 differs in that the claimant was not only the owner of a business but was also actively engaged in the operation thereof.

**CUB-369**

#### **Factory owner**

**HELD:** That a claimant, being engaged in a manufacturing business on his own account, does not cease to be so engaged when the plant is closed while he repairs the machinery and installs a new machine.

**CUB-398**

#### **Farmer**

**HELD:** That the claimant, an industrial worker who, during a period of involuntary unemployment, lived on his farm which was operated by his wife and two children, and who assisted in performing the usual chores but held himself available for industrial employment, was not self-employed.

**CUB-362**

**HELD:** That availability for work is not the deciding factor in the case of a claimant whose main and primary occupation is that of a farmer and who becomes temporarily available for work because he has finished his farm work. The claimant, although he satisfies the requirements of section 27(1)(b), has not proved *ipso facto* that he is unemployed within the meaning of section 27(1)(a). Unless he gives up his farming operations as his main occupation, he cannot qualify for the receipt of benefit.

**CUB-363, CUB-238, CUB-365,**

**CUB-366, CUB-367, CUB-375, CUB-391**

#### **Fruit farmer**

**HELD:** That the claimant, who had purchased a peach farm which he operated during the summer and early autumn and who applied for benefit in November at the beginning of the seasonal slack period, was self-employed as his main occupation was that of a fruit farmer. He cannot, although he is temporarily available for work, qualify for the receipt of benefit.

(CUB-363 followed.)

**CUB-364**

#### **Garage owner**

**HELD:** That when an insured person enters into business on his own account and thereby becomes self-employed he places himself outside the scope of the unemployment insurance plan for the duration of his self-employment. The period of self-employment continues even on days when he happens to be idle and he cannot draw any benefit during the whole of that period, no matter what his volume of business or his remuneration therefrom may be.

**CUB-264, CUB-245**

#### **Musician**

**HELD:** That employment as a sales clerk was suitable for a professional musician who had been unemployed for nearly three months, and who during the past thirty-eight months had been employed for only 284 days and had received benefit for 329 days. A claimant's employment history is an important factor in determining suitability of employment. Section 40(3) of the Act must apply to all insured persons. This claimant was unemployed although she continued practising daily and had to be at home during the daytime to await telephone calls for musical engagements. She was not available for employment because she insisted on working only as a professional musician.

**CUB-302**

#### **Painter**

**HELD:** That a painter who had voluntarily left employment in order to engage in business on his own account, who had invested money in equipment for carrying on his painting business, and who stated that he expected to resume the operation of his business in the spring, was not unemployed during periods when he had no work to do.

(CUB-245 and CUB-264 followed.)

**CUB-312**

#### **Smallholder**

**HELD:** That upon the facts, it was considered that the claimant's main occupation was that of a farmer and consequently that he was self-employed and could not, although he was temporarily available for work, qualify for the receipt of benefit.

(CUB-363 followed.)

**CUB-366**

*HELD:* That the claimant, a smallholder under the Veterans' Land Act, who is expected to couple his income from his holding with income from some other occupation, and who was seeking employment, should not be considered to be a farmer and self-employed.

**CUB-368**

#### ***Storekeeper***

*HELD:* That a claimant who has invested capital in a business, holds a business licence, and spends all or part of his time in the conduct of the business, must be presumed to be engaged in business on his own account and therefore not unemployed, unless he rebuts this presumption.

**CUB-273**

*HELD:* That a pressman who had complained to his employer of lack of co-operation from his foreman, and whose grievance was not remedied, had just cause for leaving his employment voluntarily. Although the claimant and his wife were joint owners of a store, it appeared that the latter could do all the necessary work in connection with the operation of the store, and as the claimant's earnings therefrom did not exceed an average of \$1.50 per day he was deemed to be not employed while working in the store during a period in which he was otherwise unemployed.

**CUB-306**

#### ***Translator***

*HELD:* That a claimant who has set himself up in business and who spends his time working at that business or soliciting orders, is not unemployed.

**CUB-262**

#### ***Trucker***

*HELD:* That a trucker engaged in business on his own account must be considered to have continued in this business even when no work was available for his truck. Held also that a court of referees may hear facts which were not brought to the attention of the insurance officer, but these facts must be relevant to the question submitted to the court. Under section 66(1) its decision may cover all questions arising in relation to such claim as laid before the insurance officer.

**CUB-396**

#### ***Full working week***

*HELD:* That Saturday, being recognized as a non-working day at a plant where the working week consisted of five days from Monday to Friday, must be considered as a holiday within the meaning of section 29(1)(c) of the Act, and therefore a non-compensable day.

**CUB-276A**

#### ***Holidays occurring after separation***

*HELD:* That a claimant who is separated from employment and who satisfies all the other requirements for the receipt of benefit is entitled to benefit for statutory holidays.

**CUB-97, CUB-62**

#### ***Holidays recognized as such for grade, class or shift of workers***

*HELD:* That no distinction can be made between employees who receive pay during a recognized holiday ("recognized holiday" as specifically provided for in the Act), and those who do not; both are subject to disqualification from receipt of benefit for the duration of the holiday period.

**CUB-199, CUB-2,  
CUB-62, CUB-276A, CUB-310**

#### ***Picket duty***

*HELD:* That when strike benefit was paid to striking union members who voluntarily picketed the employer's plant (the stoppage of work due to a labour dispute having ceased), and such strike benefit was not paid as remuneration for picketing, the union members could not be considered to have been under a contract of service with the union, and were unemployed.

**CUB-311**

#### ***Probationary work without pay***

*HELD:* That employment as a night clerk in a hotel was suitable for a claimant whose doctor prescribed light work. Such employment, although on a trial basis and without remuneration, is employment within the meaning of the Act.

**CUB-326**

**Proof of unemployment**

*HELD:* That a claimant may report to a local office other than the one at which his claim was made, when the second office makes no objection, although such procedure is contrary to regulations. **CUB-35**

*HELD:* That 72 hours since the last claim day should not be, in all cases, the maximum period allowed a claimant to ask for any remaining benefit days, as there is no provision which states the exact period of delay applicable to such cases. Each case must be dealt with on its own merits. A delay of four weeks was unreasonable when the claimant became re-employed but had ready access to the local office. **CUB-241**

**Railroad employee on spare board**

*HELD:* That the claimant, a railroad switchman whose name appeared last on the spare board for switchmen and who had worked approximately seven half-days during a five-week period, although prior to that time he had been in full employment, was not unemployed. (CUB-373 followed.) **CUB-374, CUB-373**

**Receiving remuneration or compensation**

*HELD:* That an insured person whose place of employment was temporarily closed and who received pay at 50 per cent of his usual rate in return for a promise to resume work for his employer when required, although free to work elsewhere in the meantime, was not unemployed. **CUB-330**

*HELD:* That a claimant who upon separation from employment, receives, in addition to the salary due him, a sum to cover leave accumulated but not taken, is deemed to have continued to receive remuneration subsequent to the date of separation for the number of days of such accumulated leave. **CUB-380**

*HELD:* That a claimant who, upon separation from employment, receives compensation from his employer for loss of employment in the amount of full salary for one month and half salary for six months, is considered to have continued to receive compensation for loss of employment, but is subject to disqualification under section 29(1)(a)(ii) of the Act only for the period during which such compensation is equivalent to the remuneration he would have received had his employment not terminated, namely, one month. **CUB-420**

**Subsequent reinstatement and payment by employer**

*HELD:* That a claimant, laid off due to a work shortage and subsequently reinstated by his employer with a retroactive effect to the date of his separation, cannot be deemed to have been unemployed during this period. **CUB-137**

**Subsidiary employment**

*HELD:* That a claimant who was employed as a sexton at a salary of \$35 per month was not engaged in a subsidiary employment, because of the amount of salary received (over \$1.00 per day), even though he was assisted by his son from time to time. **CUB-58, CUB-306**

*HELD:* That an insured person is not restricted as to the type of work which he performs as a subsidiary occupation. He may follow whatever occupation he is capable of performing. **CUB-114, CUB-293**

*HELD:* That a claimant who is in subsidiary employment and receives a bulk sum to cover services and office accommodation is entitled to deduct the cost of the accommodation before calculating his personal remuneration. **CUB-135**

**Vacation with pay on separation**

*HELD:* That vacation pay received on termination of employment must be allocated to the day or days immediately following the termination of employment; the Unemployment Insurance Act does not contemplate the receipt by an insured person of wages or compensation, and benefit, at one and the same time; a claimant is deemed not to be unemployed while in receipt of vacation pay. **CUB-210, CUB-214, CUB-380**

**Wages received pending retirement**

*HELD:* That a claimant who is on leave of absence and in receipt of a monthly salary but who is not permitted to accept work during the time he is receiving salary payments pending retirement on pension is not unemployed. **CUB-197, CUB-246**

**Weather conditions and outside construction work**

*HELD:* That an outside construction worker who is paid on an hourly basis is unemployed on a day when, because of inclement weather, no work or consequent remuneration is available. **CUB-413**

**UNION MEMBERSHIP**

*HELD:* That a labour dispute has certain characteristics which are well defined and by which it is ascertainable if a dispute is in existence within the meaning of the Act. The two sections of the Act which protect union membership refer only to the right of unemployed persons to refuse employment which would jeopardize their status as union members. **CUB-190, CUB-42, CUB-54, CUB-208**

*HELD:* That a union member who ceased work in sympathy with members of another union who had struck against their mutual employer, and who refused to cross a picket line in order to work, became thereby a participant in the labour dispute and was disqualified under section 39(1). **CUB-287**

*HELD:* That the claimant, a union member who had lost his employment because of a work stoppage caused by a labour dispute, who returned to work after the resumption of plant operations although the dispute was not settled, and who left voluntarily after working for three days, could not be relieved, under the provisions of section 43(b) of the Act, from disqualification for voluntarily leaving his employment. He should have endeavoured to have his alleged grievance rectified. The evidentiary value of a medical certificate was assessed. (CUB-208 and CUB-301 referred to.) **CUB-316**

**VACATION WITH OR WITHOUT REMUNERATION**

*See "UNEMPLOYED"*

**VOLUNTARY LEAVING****Alteration in terms of contract of service**

*HELD:* That an insured person is not justified in voluntarily leaving suitable employment because of a reduction in the number of working hours, no reduction in the rate of pay having been made. **CUB-104**

*HELD:* That an insured person who had been hired at an hourly rate of pay and who was later asked to work at a piece-work rate, had not just cause for voluntarily leaving her employment on that account, since the employer did not insist that she either work at piece-work rate or resign. **CUB-147**

*HELD:* That a claimant had just cause for voluntarily leaving his employment when his employer asked him to perform work which he had not been hired to perform, and which, because of inexperience and inability to obtain proper boots, was dangerous. **CUB-209**

**Anticipation of discharge**

*HELD:* That personal circumstances and working conditions may afford just cause for voluntarily leaving employment; this decision rests on the merits of the individual case. **CUB-22**

*HELD:* That a claimant who has been allowed to resign his position rather than be discharged for insubordination is subject to disqualification for voluntarily leaving his employment without just cause. **CUB-40**

*HELD:* That an insured person who resigned his position rather than work to the date on which his employer had notified him that his employment would end, was properly disqualified for having voluntarily left his employment without just cause. The period of disqualification was for the actual number of days of employment so lost. **CUB-146, CUB-422**

#### **Anticipation of labour dispute**

*HELD:* That voluntary separation in anticipation of a work stoppage caused by a labour dispute did not relieve a claimant of disqualification for so long as the stoppage of work continued. **CUB-244, CUB-157**

#### **Assurance of another position**

*HELD:* That desire for increased salary does not provide just cause for voluntarily leaving one's employment; assurance of another situation should be obtained before leaving. **CUB-63, CUB-176, CUB-284, CUB-291, CUB-329, CUB-339, CUB-386**

*HELD:* That a claimant who has accepted work at a wage lower than the prevailing rate, with knowledge that there would be no increase, should have some assurance of being able to secure other work immediately, before voluntarily leaving his employment. **CUB-263**

*HELD:* That a claimant who voluntarily left one temporary employment for another had just cause for leaving when it was evident that he had acted in good faith in the mistaken belief that the duration of the second employment would have been longer than that of the first. **CUB-324**

#### **Burden of proof**

*HELD:* That "unsatisfactory conduct" is not misconduct. Misconduct cannot be assumed; it must be conclusively and specifically proven. When, due to alleged unsatisfactory services, an employer demands the resignation of an employee, under threat of dismissal, the separation from employment is not voluntary. **CUB-117**

#### **Conduct such as to bring about discharge**

*HELD:* That a claimant who left her employment voluntarily because of her refusal to comply with a reasonable rule of her employer has voluntarily left her employment without just cause. **CUB-100, CUB-134**

#### **Danger of infection**

*HELD:* That fear of contracting a contagious disease, where no foundation for the fear existed, was not just cause for voluntarily leaving employment, but that real belief in the existence of danger constituted extenuating circumstances. **CUB-27**

#### **Distance of work from home**

*HELD:* That alleged transportation difficulties do not furnish just cause for voluntarily leaving suitable employment when the claimant lives in a town which is regarded as part of an industrial area, and reasonable means of transportation are available. **CUB-425**

#### **Disqualification period limited to period of employment lost**

*HELD:* That a claimant who has voluntarily left non-insurable employment without just cause is subject to disqualification therefor; the principle underlying the Act is that the risk insured against is the risk of involuntary unemployment; a person is disqualified for the period of employment which has been lost, up to a maximum period of six weeks, if his unemployment is brought about by his own actions. **CUB-56**

### **Domestic circumstances**

*HELD:* That a minor has just cause for leaving his employment when such action is necessitated by his parents' demand that he live with them at their place of residence. **CUB-73**

*HELD:* That employment is not unsuitable merely because the hours of work have been changed, by agreement between the employer and the union, from a 5 p.m. to 11 p.m. shift to alternating shifts, 7 a.m. to 3.30 p.m., and 3.30 p.m. to 12 p.m. The claimant should have adjusted her domestic circumstances to allow her to work the changed hours, as there was no prospect of employment during the evening only. **CUB-247**

*HELD:* That the intention of a married woman, whose husband was away from home serving in the navy, to live with her grandparents in another city, did not constitute just cause for leaving her employment voluntarily. **CUB-296**, **CUB-22**, **CUB-45**

*HELD:* That a claimant did not have just cause for voluntarily leaving employment at which he earned \$60 per week when he was forced to vacate his living quarters and to move his family to a city 70 miles away to live with his mother-in-law in order to obtain housing accommodation. He should have retained his employment, taking lodgings until he had secured either accommodation for his family in the city in which he worked or employment in the city to which his family had moved. **CUB-337**

### **Employer refused to increase salary**

*HELD:* Refusal of an increase in salary, which is already at the prevailing rate in the district, does not furnish just cause for voluntarily leaving one's employment. Permission to appeal should not be granted by a chairman unless there is a principle of importance involved, or any other special circumstances by reason of which leave to appeal ought to be given. **CUB-176**

### **Employment not as anticipated**

*HELD:* That a claimant who has accepted work at a wage lower than the prevailing rate, with knowledge that there would be no increase, should have some assurance of being able to secure other work immediately, before voluntarily leaving his employment. **CUB-263**

### **Employment outside of Canada**

*HELD:* That a Canadian who has voluntarily left suitable employment in the United States, which he had accepted of his own accord, had not just cause for leaving merely on account of the employment being in the United States. It is a commonly accepted practice for large numbers of Canadian people to accept employment in the United States for considerable periods in each year. The distance from the claimant's home to his place of employment was not excessive compared with the distance which Canadians often have to travel in order to secure suitable employment. **CUB-181**

### **Entering business on own account**

*HELD:* That a claimant's intention to establish himself in business on his own account did not justify leaving his employment voluntarily. While engaged in preparing to establish his own business he is not available for employment nor is he unemployed. **CUB-149**

### **Grievances**

*HELD:* That it is the duty of an employee to exhaust every reasonable means of having a grievance remedied before leaving his employment. **CUB-74**, **CUB-18**, **CUB-19**, **CUB-20**, **CUB-25**, **CUB-40**, **CUB-43**, **CUB-63**, **CUB-90**, **CUB-104**, **CUB-124**, **CUB-201**, **CUB-231**, **CUB-263**, **CUB-304**, **CUB-316**, **CUB-382**, **CUB-389**

**Honesty questioned by employer**

*HELD:* That the claimant, a salesman on a milk delivery route, who voluntarily terminated his employment because, in his opinion, his honesty had been questioned, had shown just cause for having voluntarily left his employment within the meaning of section 41(1) of the Act, since in view of the feeling which existed between the parties concerned, it would have been a hardship for the claimant to remain in the employ of the dairy. **CUB-378**

**Housing accommodation**

*HELD:* That just cause for voluntary separation had been established by a claimant who lived 29 miles from his place of employment and who was unable to secure family living accommodation closer to his work, neither public nor private transportation being available. **CUB-115, CUB-337, CUB-339**

**Ill-health**

*HELD:* That proof should be adduced when a claimant pleads injury to health, due to the nature of his employment, as just cause for voluntary leaving. **CUB-11, CUB-81, CUB-212, CUB-316, CUB-326, CUB-397**

**Marriage**

*HELD:* That a bona fide intention to be married and to secure employment in a distant city is just cause for a woman to leave her employment voluntarily. **CUB-119**

**Non-insurable employment**

*HELD:* That a claimant who has voluntarily left non-insurable employment without just cause is subject to disqualification therefor; the principle underlying the Act is that the risk insured against is the risk of involuntary unemployment; a person is disqualified for the period of employment which has been lost, up to a maximum period of six weeks, if his unemployment is brought about by his own actions. **CUB-56**

**Objection to piece-work**

*HELD:* That employment is not unsuitable merely because the hours of work have been changed, by agreement between the employer and the union, from a 5 p.m. to 11 p.m. shift to alternating shifts, 7 a.m. to 3.30 p.m., and 3.30 p.m. to 12 p.m. The claimant should have adjusted her domestic circumstances to allow her to work the changed hours, as there was no prospect of employment during the evening only. **CUB-247**

**Overtime**

*HELD:* That an employee who refused a reasonable request to work overtime and was dismissed when she failed to give a satisfactory explanation for the refusal, lost her employment by reason of her own misconduct. Working overtime is a recognized practice in industry. Extenuating circumstances warranted a reduction in the period of disqualification. **CUB-332**

**Part-time employment**

*HELD:* That when a claimant has the opportunity of remaining in part-time employment he should remain in such employment in the hope of finding other or additional work, instead of leaving this employment, and thus becoming totally unemployed. The period of disqualification may be shorter than six weeks when the employment lost would not have lasted for that period of time. **CUB-216**

**Personal affairs**

*HELD:* That leaving one's employment in order to look after personal business affairs cannot be regarded as just cause within the meaning of the Act. **CUB-112**

**Removal of home****Change of residence**

*HELD:* That alleged transportation difficulties do not furnish just cause for voluntarily leaving suitable employment when the claimant lives in a town which is regarded as part of an industrial area, and reasonable means of transportation are available. **CUB-425**

**Girl following her family**

*HELD:* That the desire of a girl, aged 22 years, to make her home with her parents who were moving to a city 2,900 miles away, constituted just cause for voluntarily leaving her employment under the existing conditions. **CUB-107**

*HELD:* That an unmarried woman, aged 22 years, had not shown just cause for voluntarily leaving her employment in alleging that she was unable to secure suitable living accommodation in a city. Her desire to live with her parents and to work in her home town did not provide good cause for refusing to apply for suitable employment in her usual occupation in a city twenty-five miles from her home, the possibility of her obtaining employment in her home town being very remote. Since she desired to work or must work, she had to adjust herself to the requirements of our industrial economy. **CUB-415, CUB-194**

**Juvenile following his parents**

*HELD:* That a minor has just cause for leaving his employment when such action is necessitated by his parents' demand that he live with them at their place of residence. **CUB-73**

**Married woman following her husband**

*HELD:* That just cause for voluntary separation had not been established by a married woman who left her employment to be with her husband who was on active service in the armed forces and therefore could have no permanent domicile. **CUB-45**

*HELD:* That removal of a claimant from a large centre of population (her student husband having finished the college year), to the home of her parents in a rural community 1,500 miles away, is indicative of a desire for a holiday rather than a desire for employment, and her plea that she could not live on \$10 per week which she received for part-time employment did not constitute just cause for voluntary separation. **CUB-126**

*HELD:* That a claimant who had moved her home some distance from her place of employment and subsequently found it impossible to get to work because of road conditions, had just cause for leaving her employment voluntarily, but was not available for work. **CUB-259**

**Married woman left to live with her grandparents**

*HELD:* That the intention of a married woman, whose husband was away from home serving in the navy, to live with her grandparents in another city, did not constitute just cause for leaving her employment voluntarily. **CUB-296**

**Resignation demanded**

*HELD:* That "unsatisfactory conduct" is not misconduct. Misconduct cannot be assumed; it must be conclusively and specifically proven. When, due to alleged unsatisfactory services, an employer demands the resignation of an employee, under threat of dismissal, the separation from employment is not voluntary. **CUB-117**

**Seaman's lengthy voyage**

*HELD:* That the claimant, a boatswain, who voluntarily left his ship on the ground that the ship was making a voyage to Africa and that since he had been on the ship for a lengthy period, he wanted a change, had not shown just cause for having voluntarily left his employment within the meaning of section 41(1) of the Act. **CUB-377**

**Sunday work**

*HELD:* That a woman who worked approximately three hours per day for seven days a week, for nearly two years, did not have just cause for leaving voluntarily merely because of a desire to avoid working for two hours on Sunday, no religious scruples being alleged, and Sunday work being not unusual in the occupation which was being followed by the claimant—chambermaid. **CUB-393**

**Transportation difficulties**

*HELD:* That lack of transportation does not furnish just cause for voluntary separation, and an insured person must arrange transportation to the nearest employment in order to be considered available for work. **CUB-106**

*HELD:* That just cause for voluntary separation had been established by a claimant who lived 29 miles from his place of employment and who was unable to secure family living accommodation closer to his work, neither public nor private transportation being available. **CUB-115**

*HELD:* That a skilled worker, earning \$1.25 per hour, who voluntarily left his employment in a city with a population of 180,000 because he found it difficult at times to travel in winter between his place of employment and his home in a town with a population of 4,000 located 38 miles away, and who had no prospect of employment in his home town, had not just cause for leaving, no evidence having been produced to show that he had made any effort to secure temporary accommodation near his employment at such times. **CUB-346, CUB-425**

**Union activities and relations**

*HELD:* That the relief from disqualification provided by section 43 of the Act applies only to refusal to accept employment and not to leaving employment which has been accepted with knowledge of the conditions thereof. (See also CUB-190 and CUB-287). A compositor who found employment with a publishing company and left voluntarily three months afterward, claiming that he did not want to act as a strike-breaker and did not realize, when he accepted the employment, what his situation would be in relation to future prospects of work and union membership, was disqualified for having left his employment voluntarily without just cause. **CUB-208, CUB-316, CUB-389**

**Wages**

*HELD:* That a government pensioner whose salary as a government employee would be reduced by the amount of his pension, had just cause for voluntarily leaving his employment. **CUB-43**

*HELD:* That a claimant who had accepted part-time work and had voluntarily left this employment because the salary was insufficient for his needs, left without just cause. **CUB-284**

*HELD:* That a claimant who accepted employment as a stock clerk at a salary of \$25 per week, which was later increased to \$32 per week, had not established just cause for voluntarily leaving this employment, by the plea that his salary was insufficient to meet his living expenses and that he had moved to another city where he hoped to obtain employment. **CUB-291, CUB-90, CUB-118, CUB-143, CUB-176, CUB-194, CUB-263**

*HELD:* That a claimant who alleged that upon commencing employment she had been promised an increase in pay at the end of three months and instead was laid off at that time, and who was rehired ten days later, did not have just cause for voluntarily leaving her employment three months afterward because she did not receive an increase in pay. There were two contracts of service and there was no breach of the second contract. **CUB-304**

**Work away from home**

*HELD:* That an unmarried person had not established just cause for voluntarily leaving his employment away from his home town when wages received were at the accepted rate for the type of work performed. **CUB-118**

*HELD:* That a woman, 27 years of age, who left her employment, which paid the accepted rate of pay for the occupation in the district where she was working, on the plea that the salary was too low and that she wanted to live with her parents in a city 115 miles away, had not shown just cause for voluntarily leaving her employment. **CUB-194**

**Working conditions**

*HELD:* That a route-salesman who left his employment voluntarily because of the long hours and the amount of walking involved, had not established just cause for leaving; the medical certificate which he produced to substantiate his statements referred to a sprained ankle which he had suffered more than three years before he separated. A medical certificate, in these circumstances, should state the condition of the claimant on the date of separation from employment. **CUB-212**

**Work obtained during a labour dispute**

*HELD:* That the relief from disqualification provided by section 43 of the Act applies only to refusal to accept employment and not to leaving employment which has been accepted with knowledge of the conditions thereof. (See also CUB-190 and CUB-287). A compositor who found employment with a publishing company and left voluntarily three months afterward, claiming that he did not want to act as a strike-breaker and did not realize, when he accepted the employment, what his situation would be in relation to future prospects of work and union membership, was disqualified for having left his employment voluntarily without just cause. **CUB-208**

**WRITTEN DIRECTION**

*See "SUITABLE EMPLOYMENT—Failure to carry out written direction"*

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**PART II**

**SELECTED DECISIONS OF THE UMPIRE**

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**SELECTED DECISIONS OF THE UMPIRE**

**COVERAGE**

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**Case No. CUC-1. (18 March, 1942)**

**Held:** That the expression "municipal authority" is not restricted to a municipality or municipal corporation but includes other agencies thereof and that an employee of a municipal Hydro Electric Commission is an employee of a "municipal authority" and, upon certification satisfactory to the Unemployment Insurance Commission that his employment is, having regard to the normal practice of the employment, permanent in character, is employed in excepted employment.

The material facts of the case are as follows:

The Mayor of the City of . . . . as Chairman of the Hydro Electric Commission of the City, and the Secretary of the Board of Control of that City, certified over the City Seal that the employment of a certain employee by the Hydro Electric Commission of the City of . . . . was, having regard to the normal practice of the employment, permanent in character and that the employment was therefore excepted by paragraph (1)(ii) of Part II of the First Schedule to the Act.

Officers of the Unemployment Insurance Commission expressed the opinion that the certificate was not appropriate, on the ground that the Hydro Electric Commission of the City of . . . . was not a municipal authority and that paragraph (1)(ii) of Part II of the First Schedule to the Act therefore had no application. The Hydro Electric Commission thereupon applied to the Unemployment Insurance Commission for a formal decision under Section 46 of the Act. The decision of the Commission sustained the ruling given by its officers. The Hydro Electric Commission appealed to the Umpire.

**DECISION**

The appeal was allowed.

"It is to be noted that Parliament has not used the expression 'municipal corporation' or 'municipality'; but it has used the expression 'municipal authority', which is much more inclusive and comprehensive. No doubt the legislator was aware of the difference in terminology and was in fact thoroughly informed as to the different municipal systems prevailing in Canada and notably in the Province of Ontario.

"The development of urban centres and the consequent expansion of local needs and requirements have brought about, within the last half century, considerable changes in the municipal government of our cities and towns.

"Several administrative activities have been removed from the immediate control of the main authority of the city or town: the Council, and have been transferred to the control and supervision of municipal agencies, with a view to attain greater efficiency and wider independence.

"As regards the supply of domestic and commercial electricity, the legislature of the Province of Ontario has set up a mandatory structure of municipal administration, in all cases where a city wishes to establish a municipal Hydro-Electric System in co-operation with the Ontario Hydro-Electric Commission.

"This structure of municipal administration has become part and parcel of the municipal government of the City of . . . .

"Parliament has laid out, in the First Schedule of the Unemployment Insurance Act, a frame-work which is large enough to include such a municipal system.

"This being so, the use of the words 'municipal authority' becomes easier to understand.

"The word 'authority' designates 'the person or persons in whom government or command is vested' and the word 'municipal' designates 'anything pertaining to a town or city or to its government'.

"The Hydro-Electric Commission of the City of . . . . a body corporate, is the 'authority' duly invested with the power to manage in and for the City of . . . . the Hydro-Electric System and is therefore a 'municipal authority'.

"For these reasons, the appeal is allowed, and it is ruled that . . . . is an employee of a 'municipal authority', to wit, the Hydro-Electric Commission of the City of . . . . and upon certification satisfactory to the Commission that his employment is, having regard to the normal practice of the employment, permanent in character, he is employed in an employment excepted under The Unemployment Insurance Act, 1940."

### **Case No. CUC-3. (24 July, 1942)**

**Held:** That a stenographer employed under contract of service in a law office is in insurable employment, not being employment specified as excepted, and that it is not necessary, in order to be employed in insurable employment, that the employee be employed in an industrial organization.

The material facts of the case are as follows:

The appellant, a practising member of the legal profession, employed a stenographer-bookkeeper in his office whose employment was admitted to be under a contract of service. The appellant, however, contended that the employments specified in Part I of the First Schedule to the Act do not contemplate the inclusion of a stenographer or other employee in a law office and that to be employed in insurable employment the employee must be employed in some industrial organization. The appellant did not contend that the stenographer's employment was excepted under Part II of the First Schedule but simply that it was not included in Part I of the First Schedule. The Commission decided that the stenographer was employed in insurable employment and the employer appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"Section 13, Paragraph (1) determines what persons are insured under the provisions of the Act. It reads as follows:—

"'Subject to the provisions of this Act, all persons who are employed in any of the employments specified in Part I of the First Schedule to this Act, not being employment specified as excepted employments in Part II of that Schedule shall be insured against unemployment in manner provided by this Act.'

"Paragraph (a) of Part I of the First Schedule of the Act reads as follows:

"Employment in Canada under any contract of service or apprenticeship, written or oral, whether expressed or implied, or whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise."

"The terms used in this paragraph are most comprehensive and do not allow any such distinction between employees as is claimed by the appellant.

"Under the circumstances it is ruled that the employment of ..... by the appellant, ..... is an employment specified in Part I of the First Schedule to the Act not being employment specified as an excepted employment in Part II of that Schedule, and that consequently ..... was an insured person from the first day of July, 1941 to the date of the application for decision of the Commission and continues to be an insured person while employed under the same conditions by the appellant.

"Appeal disallowed."

#### **Case No. CUC-4. (15 December, 1942)**

**Held:** That an employee in receipt of a salary of \$100 per month plus commission, whose earnings for the current year cannot be estimated with any reasonable degree of certainty, and whose actual earnings for the preceding year in the same employment at the same rate of remuneration did not exceed \$2,000, is included among the classes of persons employed in insurable employment.

The material facts of the case are as follows:

The applicant had been employed for some years as a salesman or district representative by ..... Limited, a business engaged in supplying educational courses by correspondence. On the coming into force of the Unemployment Insurance Act the employer registered the applicant as an employee under the provisions of the Act and Regulations. The applicant, although he did not claim that he was not employed under a contract of service, nevertheless contended that he was not liable to pay contributions under the Act on the ground that his earnings for 1941 would probably exceed \$2,000 and that his employment was therefore excepted in accordance with paragraph (n) of Part II of the First Schedule to the Act, which lists as an excepted employment—

"(n) Employment at a rate of remuneration exceeding in value two thousand dollars a year or in cases where employment involves part time service only, at a rate of remuneration which, in the opinion of the Commission, is equivalent to a rate of remuneration exceeding two thousand dollars a year for full time service."

The applicant's basis of remuneration was a salary of \$100 per month plus commissions (paid monthly) on tuition fees paid by students enrolled in his district. The employer estimated the earnings of the appli-

cant for the year 1941 as under \$2,000. In 1939 his earnings were \$1,953.23 and in 1940 \$1,621.44 and to the end of August, 1941 \$1,085.65. The employer therefore considered that Section 2(2) of the Regulations dealing with Contributions would apply and that the employee would be insurable, since at his rate of remuneration the employee's actual earnings could not be estimated with any reasonable degree of certainty and having been employed in the same employment at the same rate of remuneration his actual earnings for the immediately preceding year did not exceed \$2,000. Extended correspondence culminated in an application by the employee for a formal decision under Section 46 of the Act. The Commission referred the question to the Umpire for decision in accordance with Section 49 of the Act.

## DECISION

The Umpire decided that the applicant was engaged in insurable employment.

"Under the circumstances it appears that the applicant's earnings for the year 1941 at his rate of remuneration could not be estimated with any reasonable degree of certainty and that as the applicant was employed in the same employment at the same rate of remuneration and his actual earnings for the preceding year (1940) did not exceed \$2,000, he should be included among the classes of persons employed in insurable employment.

"It is therefore ruled that the employment of the applicant, ...., by ..... Limited is employment specified under Part I of the First Schedule to the Act not being employment specified as excepted employment in Part II of the Schedule, and that consequently ..... was an insured person from the first day of July 1941 to the 31st day of March 1942."

### **Case No. CUC-6. (12 April, 1944)**

**Held:** That a person employed as a dental nurse, who is not a graduate of any accredited school of nursing and who has had no previous experience in nursing, is not employed as a professional nurse for the sick and therefore is not in excepted employment.

The material facts of the case are as follows:

The applicant was employed by Dr. ...., a dentist, and described her duties as "constant assistance at the dental chair in all operations; sterilization and care of dental instruments; taking and developing of dental X-rays; and laboratory work". In addition she usually attended to telephone calls, looked after accounts and assisted in maintaining the tidiness of the dental office. She contended that her employment was excepted by paragraph (h) of Part II of the First Schedule to the Act, which lists as an excepted employmen—

"Employment as a professional nurse for the sick or as a probationer undergoing training for employment as such nurse."

The applicant had no professional experience as a nurse and no special training in a recognized institution teaching nursing as a profession. Officers of the Unemployment Insurance Commission expressed the opinion that she was engaged in insurable employment. The

applicant was not satisfied with that opinion and made an application for a formal decision by the Commission under Section 46 of the Act. Pursuant to Section 49 of the Act the Commission referred the question to the Umpire.

## DECISION

The Umpire decided that the applicant was engaged in insurable employment.

"The question I must decide is the following—Is the employment of the applicant 'employment as a professional nurse for the sick' within the meaning of Paragraph (h) mentioned before?

"The words 'for the sick' necessarily limit the group of nurses covered by the exception and the word 'professional' necessarily removes practical nurses from the exception. The words 'professional nurse for the sick' might not limit the field sufficiently were it not for the words which follow, i.e., 'or as a probationer undergoing training for employment as such nurse'. The word 'probationer' in relation to nursing has acquired a fairly definite meaning and that is—a person who is training at an accredited school of nursing operated in conjunction with a hospital or some other recognized institution.

"On carefully reviewing this exception in its context in relation to the purpose of the Act, I am satisfied that the exception contained in Paragraph (h) of Part II of the First Schedule means professional nurses working at their profession as such. To establish professional standing the applicant must be in a position to submit evidence of graduation from an accredited school of nursing operated in conjunction with a hospital or some other equally conclusive evidence of professional status. Further, to come within the exception the applicant must show that she is engaged in the practice of her profession.

"In this case I find that the applicant had no previous experience in nursing prior to her employment by Dr. ....; she had not graduated from any accredited school of nursing; she had not been a probationer undergoing training for employment as a professional nurse, and consequently, I find that her employment is not described by Paragraph (h) of Part II of the First Schedule and that her employment was 'such employment as to make the person engaged therein an insured person' within the meaning of Section 13 of the Act and Paragraph (a) of Part I of the First Schedule to the Act."

## Case No. CUC-7. (26 July, 1945)

**Held:** That janitors and handymen employed by the trustee of an estate in the care of houses and apartment buildings managed by the trustee are not employed in domestic service and therefore, regardless of whether or not the trustee is engaged in a trade or business carried on for the purpose of gain, are not employed in excepted employment.

The material facts of the case are as follows:

Dr. ..... employed a number of persons in various capacities in and about five apartment buildings and some sixty-five houses which he owned or in which he was interested as trustee of an estate. One group of employees was engaged in performing janitor services in the

apartment blocks. Their duties included looking after the fires, emptying the ashes, removing garbage, mowing the lawns and generally doing the things normally expected of a janitor in an apartment block. Another group, referred to as handymen, worked about the various properties, doing carpentry, decorating, repairs, snow shovelling and generally whatever was necessary to keep the properties in a proper state of repair.

While on occasion any of the employees might perform some personal service for Dr. .... at his own residence or elsewhere, that was not the general nature of the work. In all cases the work had to do with the management and upkeep of the numerous properties leased to the tenants of the owner. There was no direct relationship between Dr. ....'s employees and his tenants, the employees all being responsible only to Dr. ...., the employer, for the satisfactory performance of their duties. The employees did not ordinarily render any personal service to the employer and were not resident in or a part of his domestic establishment, although some of them were his tenants.

The employer contended that the employment of all these persons came within the meaning of "employment in domestic service" as that term is used in Paragraph (f) of Part II of the First Schedule to the Act, which lists as an excepted employment—

"(f) Employment in domestic service, except where the employed person is employed in a club or in any trade or business carried on for the purpose of gain."

It was necessary to determine whether the employment was "employment in domestic service". If the answer to that question was in the negative then no further question arose and the employees were engaged in insurable employment, but if the answer was in the affirmative, it then became necessary to determine whether Dr. .... was engaged in a trade or business carried on for the purpose of gain.

Officers of the Commission had expressed the opinion that the employment was not employment in domestic service. The employer was not satisfied to accept this opinion and ultimately the Commission referred the question to the Umpire for decision in accordance with Section 49 of the Act.

For the interpretation of the term "domestic service" the employer had relied on several English and Irish authorities in which a similar term in the Unemployment Insurance Act of Great Britain was under discussion. In particular, attention was drawn to *In Re Junior Carlton Club (1922) 1 K.B. 166* in which Roche J. defined "domestic servants" as follows:

"Domestic servants are servants whose main or general function it is to be about their employers' persons or establishments, residential or quasi-residential, for the purpose of ministering to their employers' needs or wants, or to the needs or wants of those who are members of such establishments, or of those resorting to such establishments including guests."

## DECISION

The Umpire's decision was that Dr. ....'s employees were not employed in domestic service.

"The essential elements required by Roche J. are entirely lacking in this case. Here there is no element of personal service and the service was not rendered at the employer's 'establishment'. True the services were rendered in and about the premises owned by the employer but in no other sense were these premises the residential or quasi-residential establishments of Dr. .... Rather they were the residences of Dr. ....'s tenants and there was no contractual relationship whatever between Dr. ....'s employees and the tenants.

"My attention was also directed in *Re Vellacott* (1922) K.B. 466, *Cameron v. Royal Ophthalmic Hospital* (1940) 4 A.E.R. 439 and *Pile v. Minister of Industry and Commerce* (1942) I.R. 1932, but these cases add nothing to the principle so clearly enunciated in *In Re Junior Carlton Club*. As a matter of fact the Pile case while purporting to follow the principles stated by Roche J. in the Carlton case seems to have lost sight of those essential elements of personal service to the employer or to those resorting to the employer's residential or quasi-residential establishment. In that case as in the case before me the establishment was the 'establishment' of the employer only in the sense that he was the owner and that clearly was not the sense in which Roche J. used the term in *In Re Junior Carlton Club*.

"In the case before me I find that both of the essential factors necessary to establish that the employment was employment in domestic service are entirely lacking. It is amply clear that the employees were not engaged in ministering to their employer's needs or wants or to the needs or wants of those resorting to the residential or quasi-residential establishment of the employer and it is equally clear that the various houses and apartments were not the residential or quasi-residential establishments of the employer.

"I therefore find that during the period beginning July 1, 1941, and ending May 31, 1943, Messrs. .... and Mrs. .... were not engaged in 'domestic service' within the meaning of that term as used in Paragraph (f) of Part II of the First Schedule to The Unemployment Insurance Act, 1940, and that consequently the employees mentioned were not employed in an excepted employment and that they were engaged in employment specified in Part I of the First Schedule to the Act and that they were insured against unemployment as provided by Section 13 of the Act."

#### **Case No. CUC-10. (28 November, 1947)**

**Held:** That a person performing household tasks and caring for her mother with no remuneration other than maintenance is not engaged in employment within the meaning of Part I of the First Schedule to the Act. **Held** therefore that such services do not constitute excepted employment for the purpose of extension of the two-year period.

The material facts of the case are as follows:

The appellant, a single woman aged 33, had been employed as a cashier in a grocery store from June 15, 1946 to December 14, 1946, when she was laid off on account of lack of work. On December 17, 1946 she filed a claim for benefit which was disallowed under Section 28(1) of the Act because she could not fulfil the first statutory condition.

The claimant applied for extension of the two-year period under Section 28(3)(b) of the Act claiming that from December 17, 1944 to June 14, 1946 she had been "employed in excepted employment in a private house". The claimant's duties were described as services to her mother in the capacity of a domestic and nurse for which she received no remuneration except board and lodging. The question for decision was whether this constituted excepted employment within the meaning of Paragraphs (f) or (r) of Part II of the First Schedule to the Act which read:

"(f) Employment in domestic service except where the employed person is employed in a trade or business carried on for the purpose of gain or is employed in a club (Amended 1946, s.34).

"(r) Employment for which no wages or other money payment is made, where the person employed is the child of, or is maintained by the employer."

The insurance officer did not approve of the extension, on the ground that the claimant had not proved that she had been employed under contract of service during the period in question. The claimant misinterpreted the ruling of the insurance officer as a decision of the Commission and signified her intention of appealing to the Umpire. To avoid a multiplicity of forms and proceedings the Commission therefore referred the question directly to the Umpire under Section 48 of the Act.

## DECISION

The Umpire's decision was that the claimant had not been employed under a contract of service.

"A perusal of the record indicates that the work which the claimant was doing at home, performing household tasks and caring for her mother, was merely an expression of affection and filial respect. There is no evidence of a contract of service between mother and daughter and, therefore, such service can in no sense be regarded as employment within the meaning of the Unemployment Insurance Act.

"I find, therefore, that the claimant was not engaged in excepted employment from December 17, 1944 to June 14, 1946 within the meaning of Section 28(3)(b) of the Unemployment Insurance Act.

"This decision is in accordance with a previous decision, namely CUB-49, rendered in a similar case."

### **Case No. CUC-11. (24 February, 1948)**

**Held:** That a married woman who while living with her father assists him in his business, with no definite hours of work and with no remuneration other than maintenance, is not engaged in employment within the meaning of Part I of the First Schedule to the Unemployment Insurance Act. **Held** therefore that such services do not constitute excepted employment for the purpose of extension of the two-year period.

The material facts of the case are as follows:

The appellant, a married woman aged 28, had been employed as a semi-skilled examiner by a board concerned with the purchase of war supplies at a monthly salary of \$100.00 plus cost of living bonus from March 15, 1942 to November 22, 1945. On April 8, 1947, she filed a

claim for benefit reporting that she had voluntarily left her employment on October 31, 1945, on account of "insufficient income". Her claim was disallowed under Section 28(1) of the Act because she could not fulfil the first statutory condition.

The claimant applied for extension of the two-year period under Section 28(3)(b) of the Act, claiming that from October 31, 1945 to March 31, 1946, she was employed in excepted employment. She contended that during that period she had been employed by her father, without receiving any wages or other money payment, but being maintained by him. She stated that she assisted him in his used furniture business, and that she did not work any stated number of hours or at any set salary. The claimant's father, in a letter referring to the services performed by his daughter, stated that when his daughter left her previous employment she was tired out; that he needed some help and that while he did not assign any definite hours to his daughter she was there when he needed her; that she helped dust furniture and wait on customers when he was out to dinner; and that he gave her spending money and that her board and lodging was supplied free at any time she was home.

The insurance officer did not approve of the extension, on the ground that the claimant had not proved that she was engaged in employment within the meaning of Part I of the First Schedule to the Act. It therefore followed that the claimant was not engaged in excepted employment during the period in question. The claimant was not satisfied with this ruling and applied to the Commission for a formal decision under Section 45. The Commission sustained the ruling of the insurance officer. From this decision of the Commission the claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The question to decide is whether or not the claimant's services to her father, while assisting him in his business from October 31, 1945 to March 31, 1946, and for which she received no remuneration other than her maintenance and 'spending money', was excepted employment within the meaning of Paragraph (r) of Part II of the First Schedule to the Act which reads:

"(r) Employment for which no wages or other money payment is made, where the person employed is the child of, or is maintained by the employer."

"A perusal of the records indicates that the claimant did assist her father in his business but there is no evidence that she was employed under a contract of service. The services rendered to her father, with no 'definite hours' of work, immediately after she voluntarily left her employment with the . . . because she was 'tired out' can, in no way, be regarded as employment within the meaning of the Unemployment Insurance Act.

"I find, therefore, that the claimant has not proved that she was engaged in excepted employment from October 31, 1945 to March 31, 1946, within the meaning of Paragraph (r) of Part II of the First Schedule to the Act."

**Case No. CUC-13. (12 February, 1949)**

**Held:** That a student-at-law is under a contract of apprenticeship and when remunerated for services performed under this contract is included in the class of persons employed in insurable employment.

The material facts of the case are as follows:

The appellants, a firm of barristers and solicitors engaged in a general law practice, applied to the Commission for a decision under Section 45 of the Act on the question of the nature of the relationship between a solicitor and a student-at-law in the Province of Ontario, and whether the student-at-law is included in the class of persons employed in insurable employment. Two students-at-law were attached to this firm under Articles of Clerkship in the form prescribed by the Law Society of Upper Canada. During the period in question one of the students received as an honorarium the weekly sum of \$5 and the other the weekly sum of \$15. While serving the appellants both these students-at-law were in attendance at Osgoode Hall Law School.

The Commission decided that a student-at-law in the Province of Ontario, by virtue of his Articles of Clerkship, is engaged under a contract of apprenticeship within the meaning of Paragraph (a) of Part I of the First Schedule to the Act and is therefore included in the class of persons in insurable employment. The Commission further decided that although both the students concerned were employed under a contract of apprenticeship, the first-mentioned student, by reason of the fact that he was a full-time enrolled student earning less than \$5.40 per week, was in employment excepted under the provisions of Paragraph (p) of Part II of the First Schedule to the Act and Special Order No. 13 made thereunder. The second student was held to be in insurable employment, by reason of the fact that his earnings exceeded \$5.40 per week. From this decision of the Commission the appellants appealed to the Umpire.

The sole point at issue, the appellants contended, was whether the activities of a student-at-law amount to "employment". In their view "employment" must include the connotation "means of livelihood". Unless the activity is carried on for the purpose of earning a living or a substantial part of a living it cannot be regarded as employment. Mental or physical exertion which is done for another purpose, e.g., for fun, is not employment even though a person contracts to carry on such activity. The appellants further argued that during service under articles their students were in attendance at Osgoode Hall Law School, that their services were of considerable value to the appellants and of expert quality out of all proportion to the amounts paid to them, that while in attendance at Osgoode Hall the students are faced with expenses so heavy that the amount paid to the student does not amount to a livelihood or any substantial part thereof, that to qualify as barrister and solicitor the student must serve under articles in this fashion, cannot avoid such service and cannot take employment elsewhere, and that it is not possible for a student to be unemployed or to take any benefit under the Unemployment Insurance Act.

**DECISION**

The appeal was dismissed.

"As indicated in the appellant's submission to me, 'the sole point at issue is whether the activities of a student-at-law amount to employment' within the meaning of Paragraph (a) of Part I of the First Schedule to the Unemployment Insurance Act which reads as follows:

"'Employment in Canada under any contract of service or apprenticeship, written or oral, whether expressed or implied, or whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise.'

"In the Articles of Clerkship, the student-at-law covenants to serve the solicitor in return for instruction in the practice or profession of a solicitor. This agreement, by its very essence, is a contract of apprenticeship and, therefore, when the student is remunerated for services performed under this contract, 'his activities amount to employment' insurable within the meaning of Paragraph (a) of Part I of the First Schedule to the Act, unless otherwise excepted.

"For these reasons, the appeal is dismissed."



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**SELECTED DECISIONS OF THE UMPIRE**

**BENEFIT**

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### **Case No. CUB-2. (13 March, 1943)**

**Held:** That a holiday period which is recognized as such and agreed upon by both employer and employees, is a recognized holiday within the meaning of the Act even though the employees are not paid for the holiday period.

The material facts of the case are as follows:

The claimant was employed by a cigar manufacturer from 1922 until July 25, 1942, when there was a stoppage of work for a period of two weeks for annual holidays without pay. This holiday was agreed upon by the employer and the employees at a meeting held in the month of May, 1942, and similar agreements had been made each year for the past few years.

Stating that she was not a party to this holiday or layoff, the claimant made claim for benefit on July 27, 1942. The claim was referred to a court of referees which disqualified her, by a majority decision, from receipt of benefit during the holiday period as she could not be deemed to be unemployed.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"It is evident that the stoppage of work for two weeks commencing July 24 and 25 was a voluntary arrangement entered into by the management and its employees and therefore was a customary holiday within the meaning of section 33(c) of the Act, which reads as follows:

"An insured person shall not be deemed to be unemployed \_\_\_\_\_ on any day which is recognized as a holiday for his grade or class or shift in the occupation or at the factory, workshop or other premises at which he is employed unless otherwise prescribed."

"Under these circumstances, [the claimant] could not be deemed to be unemployed during this period, and therefore not entitled to benefits under the Act.

"Appeal dismissed."

### **Case No. CUB-3. (11 June, 1943)**

**Held:** That a claimant may be properly referred to insurable or non-insurable employment and a refusal of such referral justifies a disqualification if the employment is suitable.

The material facts of the case are as follows:

The claimant, registered as a farmer, was, under National Selective Service regulations, given temporary permission subject to revocation, to accept work in a war industry. Subsequently, on account of the serious farm labour shortage, his permit to work in industry was revoked and several offers of farm employment were made to him. He refused to accept any farm employment, stating that he could not stand the heavy work and long hours. He produced a medical certificate which stated that "I think he can do heavy work if kept in the open".

The insurance officer disqualified him for refusing suitable employment and the court of referees unanimously upheld this decision.

The claimant, with the permission of the chairman of the court, appealed to the Umpire.

## DECISION

The appeal was dismissed.

"Dealing with the facts of the case, it would appear that in accepting employment with the . . . Ltd. on September 9, 1942, the appellant did so on the very definite understanding that such employment was on a temporary permit given to him by officials of National Selective Service and same could be revoked when the occasion demanded it.

"Such a situation arose on April 29th and the appellant was requested to go back to farming, which work he was evidently well qualified to perform.

"Under these circumstances, it would appear that the employment offered to the appellant was suitable employment and within the meaning of the Act.

"The appellant has been a contributor under the Unemployment Insurance Act during the whole time he was employed with . . . Ltd. and would be entitled to insurance benefits when unemployed.

"Under the Act these rights are preserved to the appellant for a considerable length of time. If he again returns in the near future from farming, which is not insurable, to an insurable occupation, he will be immediately entitled to such benefits as the Act gives to an insured person.

"Appeal dismissed."

## Case No. CUB-6. (9 October, 1943)

**Held:** That a claimant of foreign birth and not well versed in the English language had good cause for antedating a claim for benefit when it appeared that he could easily have misunderstood the pamphlet of instructions given to him by the local office, and that he had sought work with his former employer, who told him that it was not necessary for him to make a claim for benefit for the period in question.

The material facts of the case are as follows:

The claimant was employed to December 19, 1942, and made a claim for benefit on December 29, asking that the claim be antedated to December 21. The insurance officer denied the request for antedating, and this decision was upheld by a court of referees. The chairman refused to grant an oral hearing.

The union of which the claimant was a member appealed to the Umpire on the grounds that he was denied the right of appearance before the court of referees, that his employer told him that he would be unemployed for only a day or so, that he had made four calls on the employer seeking employment in vain, and that he understood that he should not apply for insurance benefit until he had been unemployed

for nine days. It was asserted that the claimant, being of foreign birth, could easily have misunderstood the instructions contained in the pamphlet issued by the local office.

## DECISION

The appeal was allowed.

"The appellant is a man of foreign birth and not well versed in the English language. According to statements made, he bears a good reputation. In his favour is the fact that in the ten-day period after separation he applied in person on four occasions for employment, expecting on each visit to the mines to return to his former employment. However, on the 10th day finding such was not the case, he asked for his insurance book, and then registered at the nearest local employment office for benefits.

"It appears that the point at issue is whether the appellant can show 'good cause' for his delayed application in filing claim for benefits. The facts of the case and bona fides of the appellant are admitted. It would appear that ..... the appellant, made every effort to obtain employment during the ten day period and made four calls upon his former employer expecting to be re-employed on each visit to the mines. It also is claimed that his employer stated that it was not necessary for him to make claim for benefits during this period.

"It would appear to the Umpire that the reasons given would, in these circumstances, be 'good cause' for the appellant in delaying making claim for benefits and therefore consider him entitled to have his claim antedated to December 21, 1942."

## Case No. CUB-7. (9 October, 1943)

**Held:** That a claimant's statement that she was not available for employment warranted a disqualification for non-availability.

The material facts of the case are as follows:

When filing her claim for benefit claimant stated that she was not available for work as she intended to wait until the place where she formerly worked re-opened in three weeks' time. The insurance officer disqualified her on the ground that she was not available for work. By majority decision a court of referees rescinded the disqualification.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"Upon filing her claim, the applicant signed the following declaration:—'Regarding my claim for insurance benefits, I declare that I am not available for work, for three weeks from this date, because I intend to wait until the place where I was working before will open again.'

"The wording of this document is clear, precise, and unambiguous.

"The majority decision of the court of referees is based on the ground that claimant had 'just cause' to refuse temporary employment as she held permanent employment.

"As a matter of fact, there was no offer of employment made to the claimant and no refusal thereof on her part.

"The applicant simply declared, in writing, that she was not available for work; her reason being that she was willing to wait and return in three weeks to her permanent employment.

"Under these circumstances, the decision of the court of referees cannot be upheld and Section 28, part iii of the Insurance Act must govern the case: A claimant, in order to receive benefits, must be capable of and available for work, but unable to obtain suitable employment.

"The applicant was not available for work, upon her own written admission.

"Therefore, the appeal is maintained."

#### **Case No. CUB-11. (28 April, 1944)**

*Held:* That proof should be adduced when a claimant pleads injury to health, due to the nature of his employment, as just cause for voluntary leaving.

The material facts of the case are as follows:

The claimant, a single woman, aged 32 years, had been employed only two weeks when she left her employment alleging that her health was being injuriously affected by the smell of the product manufactured, but she had not consulted a doctor and could not substantiate her statement by medical certificate. Her claim was disallowed by the insurance officer and by a majority decision of the court of referees.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"In considering cases of 'voluntary quitting' employment on account of 'health reasons' the Umpire considers it desirable that some proof be given of a satisfactory nature showing that the working conditions adversely affect persons claiming benefit. In the present instance, no proof of any kind has been submitted showing that the appellant's health was injuriously affected by her employment, and the court of referees on this ground ruled against the claimant.

"The Umpire concurs in this decision and the appeal is accordingly dismissed."

#### **Case No. CUB-12. (28 April, 1944)**

*Held:* That good cause for antedating had not been established by a claimant who apparently knew that he was entitled to make claim for benefit, but refrained from doing so.

The material facts of the case are as follows:

The claimant voluntarily left his employment as his wife, who resided in another town, was ill and he wished to be at home during her sickness. Nearly a month later he made a claim for benefit and requested that it be antedated. The reason given for the delay in filing his claim was his desire to obtain work in preference to insurance benefit. The insurance officer allowed the claim from the date it was

filed but did not allow the application for antedating, and this was upheld by a majority decision of the court of referees.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"It would appear to the Umpire that sufficient grounds have not been given by the appellant for not making his claim at the earlier date. His statement that he preferred to obtain work in preference to benefits indicates that he knew he was entitled to make a claim for benefit but preferred not to do so and tried to obtain work. There appears to have been no lack of understanding by the appellant of the regulations governing claims.

"In view of these circumstances the decision of the court of referees is maintained and appeal dismissed."

## Case No. CUB-18. (29 November, 1944)

**Held:** That an insured person is not justified in leaving his employment voluntarily solely because he received a lower wage than other employees who perform similar work, when the advanced years and special privileges accounted for the difference in wage rates.

The material facts of the case are as follows:

The claimant, aged 74 years, was employed as a teamster from 1920 to June 30, 1944, when he left voluntarily, stating that other men were receiving 60 cents per hour for the same kind of work for which he received 52 cents per hour. The insurance officer disqualified him from receipt of benefit for a period of six weeks for having voluntarily left his employment without just cause, and a court of referees allowed the claimant's appeal. The other men to whom he referred were required to work under normal working conditions whereas the claimant had many special privileges because of his advanced years and long service.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"It is quite clear that the appeal was allowed on purely compassionate grounds and this is amply illustrated in that portion of the decision of the court saying that 'this appeal is allowed and our only difficulty is in stating the grounds of allowance on an understandable basis.' While I am entirely sympathetic toward the compassionate attitude of the court to the claimant I find nothing to support a decision that there was just cause. It would appear to me that having in view the claimant's age and physical limitations he was receiving fair treatment by his employers and it would appear most hazardous for a man of that age to quit his present employment without having some other employment definitely arranged. I must, therefore, allow the appeal of the insurance officer and restore the disqualification for a six-week period, ending on August 11, 1944."

### **Case No. CUB-19. (29 November, 1944)**

**Held:** That an employee has not established just cause for voluntarily leaving her employment merely because she considered that there was no prospect of promotion or of increase in pay.

The material facts of the case are as follows:

The claimant, a typist, had worked for her last employer for over two years and was receiving a salary of \$60 a month, when she resigned because she "could not get a raise". The insurance officer disqualified her for six weeks for having voluntarily left her employment without just cause. She appealed to a court of referees, stating that she felt justified in quitting a position where there was no prospect of promotion or increase in pay, in order to seek a better position elsewhere. The court allowed the appeal, taking into consideration the fact that the claimant later secured a position at a salary of \$98 a month.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The facts before me show that the claimant commenced with the ..... Company at \$40 a month. Some time later, she was raised to \$50 a month and then a year later was raised to \$60 a month, which she was receiving at the time of her resignation. It is also disclosed that other typists with the same employer were earning a higher rate of remuneration.

"The evidence as to the increases in remuneration already received by the claimant and the fact that she was apparently not at the top of the range of wage rates for her classification would not support the conclusion that she had no future either in promotion or increase in pay. In any event, a desire for increase in remuneration and desire for promotion are not alone sufficient to establish just cause. The claimant must also show that some attempt had been made to find other employment and that there was reasonable prospect of obtaining that other employment. That is not shown in this case.

"The appeal of the insurance officer is, therefore, allowed and the disqualification of six weeks ending on Sept. 18/44 imposed by the insurance officer is restored."

### **Case No. CUB-20. (29 November, 1944)**

**Held:** That a court of referees is entitled to accept a claimant's reason for leaving employment, as given on his separation notice to his employer and on his application for benefit, rather than on a different reason given on his appeal to the court.

The material facts of the case are as follows:

The claimant was employed as a painter and decorator from May 1, 1944 to June 21, 1944, and made a claim for benefit on June 22, 1944, stating that he had "left voluntarily because I wanted steady employment". The employer reported that he had left voluntarily, and that he would have been kept in employment for a longer period of time, even though his services were unsatisfactory, had he not separated.

The insurance officer disqualified him from receipt of benefit for a period of six weeks for having voluntarily left his employment without just cause.

On appeal to a court of referees, the claimant stated that he had been discharged from his employment. Both the claimant and the employer were present at the hearing, and the court, by a majority decision, maintained the disqualification.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"There is really no point of law or interpretation of the Act involved in this appeal. However, it is worth noting that on the separation notice and on the original application for benefit the claimant made it perfectly clear that he was leaving voluntarily and had not been dismissed. It was only when he was disqualified that this story changed, the finding of fact of the court of referees is entirely consistent with the separation notice and the original application for benefit.

"There is no reason to disturb the finding of fact of the court of referees which had the opportunity to determine the credibility of the evidence.

"Accordingly, the appeal is dismissed."

## Case No. CUB-22. (21 December, 1944)

**Held:** That personal circumstances and working conditions may afford just cause for voluntarily leaving employment; this decision rests on the merits of the individual case.

The material facts of the case are as follows:

The claimant, an unmarried woman aged 45 years, was employed as a stenographer with a military unit from August 18, 1943, to July 31, 1944, when she left voluntarily and stated that she wished to secure a permanent job as she was over the age limit for a permanent appointment in her last employment. She was disqualified for a period of six weeks for having voluntarily left her employment without just cause, and appealed to a court of referees.

The court allowed the appeal on the following grounds: the claimant was under the impression that, under National Selective Service Regulations, she could not apply for another position while employed; an aged mother and a crippled brother were dependent on her for support; she was the only female employee in a room in which many male employees were working and she only had to remain seated while working, and during the previous winter had to wear her overcoat, while working, in order to keep warm.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The evidence discloses beyond question of doubt that the family responsibilities of the claimant are unusual and that in view of those

responsibilities it was only proper for the claimant to consider the advisability of obtaining permanent employment which would enable her to continue to carry those responsibilities. Ordinarily, a benefit claimant would be disqualified for at least some period where he leaves his employment voluntarily and without any definite prospect of other employment. In this case I am quite satisfied that the claimant erroneously believed that there was no means open to her to seek other employment other than by quitting her present employment and then applying for a permit under the National Selective Service Civilian Regulations to enable her to seek new employment. As a matter of fact, she could have applied at the Employment Service Office for a permit to seek other employment while continuing in her present employment but I am quite satisfied that she was not aware of this. For this reason particularly I am satisfied that the claimant did have just cause for terminating her employment even though she acted on the erroneous understanding that the steps she took were the only means open to her to find permanent employment which would allow her to continue to carry her family responsibilities.

"The physical environment of her present employment is also a factor but is of secondary importance.

"The circumstances in the case are exceptional and the decision rests on the merits of the individual case.

"The appeal of the insurance officer is therefore disallowed and the decision of the court of referees is confirmed."

### **Case No. CUB-24. (18 January, 1945)**

*Held:* That full-time, day employment is suitable, after five months of unemployment, for a married woman who had formerly worked on an evening "Victory" shift of five hours, and restricting her employment to the previous pattern of work made her not available.

The material facts of the case are as follows:

The claimant, a married woman, after five months' unemployment, was disqualified for six weeks by the insurance officer for refusing to accept daytime work with her former employer. She had formerly worked at this plant for over 3 years, first on a full-time basis, then transferring to the "Victory" shift on part-time work involving five hours' work daily when she was married. She was laid off owing to work shortage. She restricted her availability to "Victory" shift only. A court of referees rescinded the disqualification.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"The claimant takes the position that the work offered was unsuitable on account of her domestic responsibilities.

"Work on a five hour shift, which is the only work she is willing to accept, has not been, since she left her employment, available for women workers and there is no prospect of finding such work at .....

"In refusing any work except on a five hour shift, which is a very unusual period of employment, the claimant had so limited her sphere of availability as to render herself, for all practical purposes, not available for work.

"Moreover, the work, which was offered is suitable, and the claimant, under the circumstances was not justified in refusing it.

"Therefore, the appeal is maintained."

### **Case No. CUB-25. (22 January, 1945)**

**Held: That a penalty which is disproportionate to the offence which was a breach of the employer's rule affords just cause for voluntarily leaving one's employment.**

The material facts of the case are as follows:

The claimant left her employment because on her return to work from a week's holiday, being a half-day late, she was told not to come to work until two days later. The insurance officer disqualified her for a period of six weeks, on the ground that she had voluntarily left her employment without just cause. Her appeal to a court of referees was allowed by a majority decision.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"There is really no point of law or interpretation of the Act involved; the only question is the correct interpretation of the facts. It is admitted by both parties that the claimant left her employment voluntarily; the point to establish is whether or not she had just cause for doing so.

"This employee as well as others, was given one week's holiday. She was supposed to come back to work on a Monday morning. Her home is in ..... and there is no train on Sunday so she took the train on Monday and arrived [back] at 10.30 a.m. It was too late to report that morning so she waited until noon and reported at 1.00 o'clock. The forelady told her to go home and also told her not to come back until Wednesday morning. The claimant came to the conclusion that this treatment was altogether too harsh and decided to quit and served the usual notice.

"The claimant, as all of the employees of this firm, was entitled to a vacation of seven days. It appears that she lived in the country at her parent's home and in order to arrive in time on Monday morning she would have had to [return] on Saturday, thereby curtailing her holiday period by two days out of seven. The claimant preferred to arrive on Monday morning at 10.30, which, according to the employer's rules, was too late to report on that morning; so she reported to work at 1 p.m. with the result she was penalized for her lateness.

"It appears to me that the claimant was justified in leaving her employment voluntarily in view of the penalty imposed upon her, of the loss of two days' employment, for having reported late on the day she was to return from her vacation. Such a penalty seems disproportionate to her breach of the company's rule.

"After considering all the facts, I am of the opinion that the majority opinion of the court of referees should not be disturbed.

"The appeal of the insurance officer is therefore dismissed, claimant's claim for benefit is allowed and the disqualification imposed by the insurance officer removed."

### **Case No. CUB-26. (22 January, 1945)**

**Held:** That a separation from employment under threat of dismissal is not voluntary leaving, but, in substance, a dismissal; alleged misconduct must be proven before disqualification may be imposed; and instances of misconduct which have been condoned may not be used at a later date as justification for dismissal for misconduct.

The material facts of the case are as follows:

The claimant was employed as a desk clerk in a war services hostel from August, 1942 to April 8, 1944, and on making claim for benefit he reported that he had "voluntarily resigned following disagreement". The reason given by the employer was "Voluntary. Resigned following disagreement".

Further information revealed that the claimant's duties included looking after the check-room, and the incident which led to the disagreement was concerned with a bottle of liquor which had been checked, and part of the contents had disappeared when the owner called for it. The manager blamed the claimant for the disappearance, as he had the keys to the check-room. The manager alleged that he had had to warn the claimant about his drinking activities, both on and off duty, and after this disagreement about the bottle the claimant was given the choice of resigning or being dismissed.

The insurance officer disqualified the claimant from receipt of benefit for a period of six weeks because it appeared that the latter had lost his employment by reason of his own misconduct. A majority decision of a court of referees sustained this disqualification.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"The evidence discloses that the claimant resigned not entirely of his own accord but under the threat of dismissal by reason of his alleged misconduct, although the employer stated to the court of referees that as far as he was concerned the claimant resigned.

"It appears that the manager of the hostel prohibited the claimant from drinking on the premises whether on or off duty, but that the claimant did in fact consume liquor, and this to the manager's knowledge, without any action being taken, other than verbal reprimands. These earlier incidents, therefore, would not have justified the dismissal of the claimant, on the first day of April, 1944, for misconduct.

"The incident which seems to have been the proximate cause of the claimant's resignation or dismissal is that regarding a checked parcel left by a sailor and found not to be intact the following morning. The evidence is perfectly clear that there was no proof whatsoever that the claimant had wrongfully tampered with the bottle or that he was responsible in any way for the diminution of its content. No proof having

been obtained that the claimant was guilty of misconduct in this connection, this incident, therefore could not justify the dismissal of the claimant on the ground of misconduct.

"There were a number of previous instances regarding the claimant having consumed liquor contrary to instructions, but, with the exception that he was reprimanded, those instances were apparently overlooked and forgotten and they can hardly be brought up at a later date as justification for dismissal for serious misconduct. Those earlier events are quite unrelated to the proximate cause of the termination of employment and cannot be used to bolster up the unproved charge regarding the bottle left in the custody of the claimant.

"On the facts before me, I find that that is not actually a case of voluntary leaving, but, in substance, a dismissal by reason of misconduct which had been alleged but not proven. The misconduct not having been proved I, therefore, allow the claimant's appeal. The disqualification imposed by the insurance officer and by the court of referees is consequently removed and the claim for benefit is allowed."

#### **Case No. CUB-27. (15 February, 1945)**

**Held:** That fear of contracting a contagious disease, where no foundation for the fear existed, was not just cause for voluntarily leaving employment, but that real belief in the existence of danger constituted extenuating circumstances.

The material facts of the case are as follows:

The claimant, a widow aged 47 years, was employed as a switchboard operator at an Air Force Manning School from October 1941 to March 1944, when she voluntarily left her employment and made a claim for benefit. She explained that the other operator with whom she worked lived in a house where a child was ill with scarlet fever, and that she was afraid to continue working with this operator because of the danger of contagion. It was found that she had been assured by the school medical officer that there was no danger of contagion.

The insurance officer disqualified her from receipt of benefit for a period of six weeks for having voluntarily left her employment without just cause. A court of referees confirmed the disqualification.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed, but the period of disqualification was reduced to four weeks.

"The court of referees held an oral hearing of the case and at the hearing the Medical Officer of the [Training School] satisfied the court that there was in fact no danger of the claimant contracting scarlet fever as a result of the proximity of the other operator.

"Accepting this finding of fact then the question is was the disqualification imposed upon the claimant a proper one in the light of all the circumstances existing or were there some extenuating circumstances which might have suggested the propriety of a shorter period of disqualification. I am satisfied on the information available to me that even though the claimant was assured that there was no danger she still believed that the danger existed and while she was wrong in fact, nevertheless the fear of contagion was real.

"I, therefore, come to the conclusion that in view of the state of mind of the claimant at the time of leaving her employment the disqualification was a little severe and in my view a disqualification of four weeks would have been proper in this case. The disqualification imposed by the insurance officer and confirmed by the court of referees is therefore reduced to four weeks."

### **Case No. CUB-28. (15 February, 1945)**

**Held:** That solicitation of union membership during working hours, after warning to discontinue the practice, is misconduct.

The material facts of the case are as follows:

The claimant, employed as a miner, was discharged from his employment for soliciting union memberships during working hours after written warning to discontinue such practice. Three weeks later he filed a postal claim for benefit and applied to have his claim antedated to the day following his separation. The insurance officer did not approve the antedating and disqualified the claimant for a period of six weeks from the time of separation, on the ground that he had been discharged from his employment by reason of his own misconduct. On appeal to a court of referees the court upheld the disallowance of the antedating and confirmed the six weeks' disqualification imposed by the insurance officer.

The union appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The appeal to me is on substantially the same grounds as the appeal to the court of referees and no new evidence whatsoever has been submitted in regard to the discharge of the claimant by the ..... Gold Mine.

"It is interesting to note that some considerable time prior to consideration of the appeal by the court of referees the whole matter of [the claimant's] dismissal by the company had been fully investigated by Judge ....., who had been appointed by the Minister of Labour to act as Industrial Disputes Enquiry Commissioner in the matter. The Commissioner's report confirmed the action of the company in discharging [the claimant] for soliciting union memberships during working hours.

"In view of the finding of the Industrial Disputes Enquiry Commissioner and of the court of referees and in view of the fact that no new evidence has been submitted to me I come to the conclusion that Section 44 of the Unemployment Insurance Act has no application and I see no reason for disturbing the decision of the court of referees and, accordingly, find that the claimant was discharged by reason of his own misconduct and I confirm the disqualification for a six-week period.

"Having found that the disqualification was proper then the question as to the disallowance of the application for antedating becomes of secondary importance. From the record it appears that the first enquiry regarding benefit was made on July 17 although a formal application for benefit was not submitted until July 28. It appears from the record

that the application for antedating was approved back to July 17, the date on which the first enquiry was made, but was not approved for the period between June 24 and July 17 and in view of the fact that the disqualification commenced from June 24 and continues to August 6 I see no particular reason for disturbing the finding of the insurance officer which was confirmed by the court of referees."

### **Case No. CUB-29. (15 February, 1945)**

**Held:** That a claimant with a history of full-time employment, who has been referred unsuccessfully to seven situations and who refused the next because he was available for temporary work only, was not available for work.

The material facts of the case are as follows:

The claimant resigned, because of ill health, from his employment as a janitor in an automobile factory where he had been employed for over three years. He registered for work as a salesman, indicating that this was his usual occupation. During the next several weeks the local officer referred him to seven jobs but for a variety of reasons none of these vacancies was suitable to the claimant. After having been unemployed for approximately four months he was referred to work as a bank messenger, which he did not accept. He would have accepted it temporarily but this was not satisfactory to the bank, which desired a permanent employee. The insurance officer disqualified him from receipt of benefit on the ground that he had so limited the type of employment for which he was available that he could not be regarded as available within the meaning of the Act, and this decision was unanimously upheld by the court of referees.

With permission of the chairman the claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"It will not be necessary to deal individually with the various jobs to which he was referred but some mention should be made of the offer of employment with the ..... Bank as this referral does indicate the manner in which the claimant limited his sphere of activity. There is every reason to believe that the employment was entirely suitable but nevertheless the claimant's conversation with the prospective employer was such as to make it virtually impossible for the employer to engage him. Naturally the bank was seeking the services of someone whose employment would likely be continuous but the claimant indicated that as he held a Labour Exit Permit and had applications in for employment with the Civil Service and by reason of his state of health he could not guarantee that his service would be permanent. I might say in passing that there are few of us who are really in a position to guarantee permanent service insofar as health is concerned as the condition of health may change at any time.

"The circumstances in connection with the non-acceptance of employment with the ..... Bank are such that in my view it could reasonably have been held that there was a refusal of suitable employment but the insurance officer put the disqualification on the basis

of non-availability and the circumstances are equally consistent with that view. The claimant appealed to the court of referees against the disqualification imposed by the insurance officer and the court of referees after hearing the claimant unanimously disallowed the appeal finding that he had so restricted the type of employment which he would accept that for all practical purposes he was not available for employment and on the record I cannot disagree with that finding.

"While the point is no longer of importance there is some question in my mind whether the claimant was really eligible for benefit at the time of his original application after voluntarily quitting the employment which he had apparently been able to perform for some three years. The appeal is disallowed and the disqualification imposed by the insurance officer and supported by the court of referees is hereby confirmed."

### **Case No. CUB-30. (19 February, 1945)**

**Held:** That the claimant, an office clerk, who had worked on an evening shift during the previous sixteen months, was available for work even though, due to domestic reasons, she restricted her availability to evening work; availability and suitability of employment are intimately linked and in many cases cannot be considered separately; no work had been offered to the claimant, and it was impossible to know whether or not she would refuse employment which was suitable in her case, the length of unemployment being just over a month.

The material facts of the case are as follows:

When filing claim for benefit claimant stated she could take work only during the evening hours owing to the fact that she was required to care for her sick mother during the day time. She had previously worked for sixteen months as an office clerk on the night shift in a government department and separated on July 20, 1944, owing to work shortage. Her claim for benefit was made on August 24 next. The insurance officer disqualified the claimant for six weeks on the ground that she was not available for work but this decision was reversed by unanimous decision of a court of referees.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The circumstances of this case are rather unusual and the decision which I am about to render applies to this case only and will not constitute a precedent in other cases where the facts may be more or less similar.

"The question for me to decide is whether the claimant was available for work within the meaning of the Act.

"It is contended that the claimant has restricted her sphere of activity; but it appears nevertheless that she would have been ready to work at any time, were not her domestic responsibilities of such a nature as to render it difficult for her to accept work other than at night. There may have been no night work of precisely the same kind as the claimant had been performing, available in that city, but there might have been night work as a cashier, or other clerical help in a restaurant, theatre, or other similar enterprise. Clerical night work is a normal

occupation and not an unusual sphere of activity. In order to qualify for benefit, the Act does not require a person to be available for any and all types of work nor for every hour of the day. It is sufficient that a person is reasonably available for work in some sphere of activity.

"Although the question of availability for work and the question of suitability of employment are in many respects distinct questions, nevertheless they are intimately linked so that in most cases they cannot be considered entirely separate.

"In this particular instance, it is significant to note that no work was ever offered to the claimant. If work had been offered it would have been a relatively easy matter to determine whether suitable employment had been refused. But to anticipate a refusal from a claimant results in treating, as if they were entirely distinct and separate, the two questions of availability for work and suitability of employment, and in a case such as this, I believe that these questions should be treated together.

"I am of the opinion that, in view of the special domestic circumstances of the claimant, she was in fact available for work and by that, I mean that she was available for any employment which was suitable in her case.

"I do not find therefore that there are any circumstances which would justify me in disturbing the decision of the court of referees and the appeal is therefore dismissed and the claim allowed."

### **Case No. CUB-31. (2 March, 1945)**

**Held:** That notification of available employment must be adequate, and the employment must be suitable, before disqualification may be made for failure to apply. (Notification made by employer on notice-board in mass lay-off.)

The material facts of the case are as follows:

The claimant was one of approximately nine hundred and fifty miners who were laid off temporarily as a result of a shutdown to effect repairs in Nos. 1 and 4 mines. A notice was posted by the employer in various places on the property, advising that the shutdown was to take place in nine days and, five days later, another notice was posted instructing men who would be affected by the shutdown to apply to the manager of No. 2 mine if they wished to work during the idle period. The claimant did not apply for work at No. 2 mine and when he made claim for benefit he was disqualified for a period of six weeks on the ground that he had, without good cause, failed to apply for a situation in suitable employment which had been notified to him. A court of referees, by a majority decision, upheld the decision of the insurance officer.

The union of which the claimant was a member appealed to the Umpire on the ground that only a limited number of the nine hundred and fifty idle men could have been absorbed in No. 2 mine and that, therefore, the notice posted by the employer could not be considered a notification within the meaning of the Act.

### **DECISION**

The appeal was allowed.

"The claimant, with the support of his union, appealed to me and on October 26, 1944, I heard the union representative on behalf of the claimant. Shortly after hearing the submissions on behalf of the claimant, I requested the employer to make such submissions as they might desire me to consider in reaching a decision. There was considerable delay in the submission of the written representations of the employer but this delay is no doubt accounted for, at least in part, by the fact that the Royal Commission on Coal has been conducting hearings in ..... I take it as an established fact that the claimant, and presumably many of the nine hundred other miners laid off as a result of the temporary closure of Nos. 1 and 4 Mines did in fact see the notice quoted above and the question for me to decide turns on the application of Section 43 (b) (i) of the Act to the circumstances existing in this case. Varying degrees of emphasis have been placed throughout the proceedings in this case on a variety of reasons why the claimant did not apply for employment pursuant to the notice posted by the company but in the notice of appeal and in the oral representations made to me the principal ground of appeal rests on the alleged failure on the part of the company to conduct the proposed transfers from one mine to another in accordance with the terms of a collective agreement and established custom and practice.

"Referring first to the so-called custom and practice the spokesman for the claimant cited a number of instances where transfers from one mine to another had been arranged after negotiations. I do not find that it is established that any such custom as has been suggested exists. On the contrary the fact seems to be that on occasion negotiations have been entered into to avert a threatened strike. Negotiations entered into after the application of such pressure can hardly support the argument that it had become an established custom and practice and on the record before me I do not find that any such custom existed.

"Then turning to the argument based on the suggestion that the company had failed to act in accordance with the provisions of a collective agreement between the company and [the union], several clauses in the agreement were brought to my attention including Clauses 6, 17 and 26. Clause 17 really has no bearing on the facts in this case but the provisions of Clauses 6 and 26 are of interest. They read as follows:

" 'No. 6 Hiring, Discharging, and Time to be Paid For:

(a) Management:

" "The Management of the mine and the direction of the working force is vested exclusively in the operator and the [union] shall not abridge this right in accordance with the terms of this Agreement.'

" 'No. 26 Section of Mines Shut Down Indefinitely:

" "It is agreed wherein any section of a mine is shut down for an indefinite period, that the opportunity of a division of the work will be given to each and every man thrown out of employment. However, it is understood the question must be taken up with the management and an understanding reached as to the method that may be put into effect.'

"Clause 6 seems to be quite clear and explicit but it was argued before me that this clause must be read subject to Clause 26. Even if that were so and I would think that very doubtful, has Clause 26 any application in the circumstances here? That clause relates to a very definite set of circumstances, namely, the shutdown of a section of a mine for an indefinite period. That is simply not the case here. This was not a shutdown for an indefinite period of a section of a mine. On the contrary, it was a shutdown of an entire mine and for a definite period although the shutdown did in fact exceed by a few days the period originally estimated. I, therefore, come to the conclusion that the arguments on behalf of the claimant with reference to the collective agreement fail.

"Among the representations made to me on behalf of the claimant and I may say that the arguments had not been raised at any earlier point in the proceedings, was an argument based on Section 32 of the Unemployment Insurance Act. It was argued that under Section 32 the claimant was entitled to refuse the employment in question because by acceptance he would lose the right, within the words of Section 32 'to continue to be a member and to observe the lawful rules of ..... any association, organization or union of workers'. I find it not proved that the claimant would have jeopardized his status as a member of the union by acceptance of employment and it was not shown to me that any such rule existed. As a matter of fact the evidence was quite clear that other members of the union who had entered the employment in question, did not jeopardize their union status in any way and, accordingly, I find that Section 32 of the Act has no direct bearing on the question before me for decision.

"As a partial summary I do not find in favour of the claimant on the arguments based on custom, on the collective agreement, and on Section 32 of the Act but that does not dispose of the question whether the claimant was properly disqualified under Section 43 (b) (i) of the Act. It is necessary to look a little closer at the facts to determine whether the claimant without good cause failed to apply for a situation in employment suitable in his case and notified to him. Was the claimant in fact notified of a suitable vacancy and, if so, was his failure to apply without good cause?

"There were approximately nine hundred men involved in the lay-off and the evidence seems to be perfectly clear that there was alternative employment available for only some two hundred men and the notification of these two hundred vacancies was simply to the effect that:

"'Men from No. 1 and 4 mines who wish to work during the idle period apply to the Manager of No. 2 Mine.'

Can that notice be regarded as a notification of suitable vacancies? And even if it were, is it reasonable to notify some nine hundred men in such general terms of the possibility that perhaps one out of four or five of them would obtain some form of employment if he applied to the Manager of No. 2 mine? The notice gave no indication of the nature of the work, the types of skills required or the number of men required for each particular type of work. As a matter of fact it is clear that if two hundred men had reported it was the intention to use a considerable number of them on clean-up work or some other form of work other than

mining. Then, too, it is shown that the nature of the mining operations in No. 2 Mine is somewhat different to that in No. 1 and 4.

"Under the circumstances I find that there was no notification to the claimant of a situation of employment suitable to him within the meaning of subparagraph (i) of paragraph (b) of Section 43 of the Act or, alternatively, that the notification was so vague and unreasonable in respect of numbers that the claimant did have good cause for failure to apply.

"It is my view that the handling of this temporary lay-off by the local office left a good deal to be desired and much of the difficulty arising out of the lay-off could have been averted by prompt, vigorous action on the part of the local office.

"I, therefore, allow the appeal of the claimant and the disqualification imposed by the insurance officer is, accordingly, removed."

### **Case No. CUB-32. (24 April, 1945)**

**Held:** That ignorance of the provisions of the Act does not constitute good cause for antedating a claim for benefit.

The material facts of the case are as follows:

The claimant was employed as a watchman in the city of E. .... from August, 1944 to October 31, 1944, and made an initial claim for benefit on November 10, 1944. He asked that his claim be antedated to November 1, as he had not received his insurance book from his employer until November 8, and was not aware of the rules governing unemployment insurance benefit until November 10.

The application for antedating was not approved by the insurance officer, and a court of referees sustained his decision by a majority decision.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The Unemployment Insurance Act has been in operation for approximately three and one-half years and it is reasonable to assume that by this time its more important provisions are known to those who are intended to benefit by the provisions of the Act. There was a time when the lack of knowledge of the requirements in connection with the making of an application for benefit was quite understandable, but that can no longer be accepted as a valid reason for failure to apply for benefit immediately after the employment has been terminated.

"The appeal is, therefore, disallowed."

### **Case No. CUB-33. (24 April, 1945)**

**Held:** That a claimant is justified in refusing employment at a rate of wages lower than that paid by other employers in the same area for the same type of work; and that a period during which a claimant is taking a rest on medical advice is not to be regarded as a period of unemployment for the purpose of determining the suitability of an offer of employment.

The material facts of the case are as follows:

The claimant, married, aged 44 years, was employed from December 1942, to July 15, 1944, as a comptometer operator at a salary of

\$100.64 per month. She left this employment as her doctor had advised her to take two months' rest. On September 15 next she made application for employment at the local office, and on September 21 she made claim for benefit. On October 26 she was offered employment as a comptometer operator at a salary of \$19.00 per week, the employment to last until the early part of the next December. She refused to accept this employment, and was disqualified from receipt of benefit for a period of six weeks.

A court of referees, by a majority decision, upheld this disqualification, although the claimant stated that she had, in the meantime, applied for a position as a comptometer operator at a salary of \$25.00 per week, which position had been filled when she applied, and that she had secured a position as a comptometer operator at a salary of \$21.00 per week.

The claimant appealed to the Umpire, advising that she had twelve years' experience in business, and that the acceptance of a temporary position would have jeopardized her opportunity of securing the permanent position which she had secured on November 16.

## DECISION

The appeal was allowed.

"The claimant appealed against the disqualification imposed by the insurance officer and after a hearing on November 29, 1944, the court by a majority decision, upheld the decision of the insurance officer. The decision of the court of referees was based on sub-paragraph (iii) of Section 31(b) of the Act, the court apparently being of the view that a reasonable time had elapsed, during which it was not possible for her to get employment at her former salary, and further, that the salary offered was not lower than that recognized by good employers. The claimant has appealed to me against that decision.

"The decision of the court of referees appears to be based on the premise that the period of unemployment commenced on July 15, and that when she applied for benefit late in September, she had already been unemployed for more than two months. I hardly think that is a proper assessment of the facts. During the period from July 15, to September 15, the claimant was taking a rest on her doctor's instructions and quite properly had not applied for employment and certainly in that sense could not be regarded as being unemployed. As a matter of fact, the claimant was simply not available for employment during that period. Accordingly, when, on October 26, the insurance officer disqualified her for receipt of further benefit, she had for the purposes of the Act been unemployed for only a little more than a month. In these circumstances I do not think it can be said that a reasonable time had elapsed and I am of the view that she was within her rights in refusing employment at a lower rate of remuneration than she had been accustomed to receive. It is significant, too, that during the period of unemployment she had been offered employment as a comptometer operator at a higher rate of remuneration than what would be paid in the temporary position, which she refused and which was the basis of disqualification by the insurance officer. Furthermore, it was only eighteen days after the disqualification that she was again offered employment as a comptometer operator at a higher rate of remunera-

tion than that which she had refused. All of these circumstances point to the fact that she was quite justified in refusing temporary employment at a rate which was apparently low, not only in comparison with what she had formerly been paid, but in comparison with what was being paid by other employers in the same area for the same type of work.

"The appeal of the claimant is, therefore, allowed and the disqualification imposed by the insurance officer is removed."

### **Case No. CUB-34. (26 April, 1945)**

**Held:** That communication by telephone between a local office and a claimant is a proper means of communication.

The material facts of the case are as follows:

The local office of the Commission telephoned the claimant advising her of a possible vacancy which would be suitable for her, and requested that she call at the office immediately. She did not call at the local office until the following morning and by that time the vacancy had been filled.

The insurance officer disqualified her from receipt of benefit for six weeks for failing to apply for a situation in suitable employment. On her appeal to a court of referees, which was allowed, the claimant said that she had not applied because she believed the voice on the telephone belonged to one of her friends.

The insurance officer appealed to the Umpire.

### **DECISION**

The principle of notification by telephone was upheld but the appeal was dismissed on other grounds.

"The insurance officer has appealed to me on the ground that the claimant was negligent in not complying immediately with the telephone request to report at the local office and against the finding of the court of referees that a telephone call is not a proper means of communication with an insured person.

"Dealing with the second point, as it is the point involving a real question of principle, I must disagree with the conclusion of the court of referees that the telephone is not a proper means of communication as between a local office of the Unemployment Insurance Commission and a benefit claimant. The Unemployment Insurance Commission has the responsibility imposed upon it by a statute, of operating a national employment service and I think it goes without saying, that the service must be the most efficient service that is possible. To attain that degree of efficiency, it is obvious that the Commission in its local offices must use all of the normal modern means of quick communication. The telephone is quite a normal method for each and all of us to transact our daily business. I think there is no doubt that the local offices of the Commission must use the means of communication which will give the greatest assistance in effecting prompt placement of unemployed persons.

"However, the claimant says that she did not believe that the call was from the local office and I am prepared to give her the benefit of the doubt in that regard.

"The decision of the court of referees in so far as it relates to the proper means of communication between a local office and a benefit

claimant is reversed, but on the question of the negligence of the claimant in not reporting forthwith to the local office, the appeal of the insurance officer is disallowed for the reasons already stated."

### **Case No. CUB-35. (26 April, 1945)**

**Held:** That a claimant may report to a local office other than the one at which his claim was made, when the second office makes no objection, although such procedure is contrary to regulations.

The material facts of the case are as follows:

The claimant, on becoming unemployed, filed a claim for benefit and was advised to report to the local office the following week. Shortly after filing her claim she left the city and on the day she should have reported to her local office she reported to another local office within the same region. The insurance officer was of the opinion that the claimant could not be considered to have made her claim in the prescribed manner and benefit was not paid for the period between the date she last reported to her own local office and the date she reported to the other local office, and this decision was upheld unanimously by a court of referees.

The chairman of the court granted the claimant leave to appeal to the Umpire.

### **DECISION**

The appeal was allowed.

"Section six of the Unemployment Insurance Benefit Regulations contains the following provisions:

" "6. (1) A claimant shall, as evidence of being unemployed, attend at the local office where he last claimed benefit or with the approval of the Commission at some other local office, on every working day or on such days as the Commission may direct, at such times as the Commission may direct, and if required to do so, shall there sign a register in such form as the Commission may from time to time provide.

" " (2) The Commission may, in any case, dispense with the requirements of sub-section 1 and in any such case, a claimant shall furnish such written evidence of unemployment as the Commission may require."

"Notwithstanding those provisions of the Benefit Regulations, the [second] office allowed her to sign the unemployment insurance register in order to prove unemployment. The [second] office communicated with the [first] office in regard to the claimant and the [first] office raised no objection at that time to [the claimant] continuing to report for the time being to the local office at ..... Subsequently, the insurance officer disallowed the claim on the ground that the claimant had failed to report at the [first] local office as required by the Regulations and as she was directed to do. She appealed to the court of referees which unanimously upheld the decision of the insurance officer. She now appeals to me against this decision.

"I think there can be little doubt as to the purpose and meaning of sub-section one of section six of the Benefit Regulations. If the claimant

wishes to register at some office other than that in the district where she became unemployed, the claimant is required first to obtain the approval of the local office. This the claimant failed to do and if it were not for the action of the [second] office and the [first] office in directing the claimant to register, I would have no hesitation in disallowing the appeal. However, I cannot overlook the fact that although it was contrary to the provisions of the Regulations, the local office at ..... did permit the claimant to register there and prove unemployment and no objection to this was raised by the [first] local office when the matter came to their attention. I am of the view that the insurance officer is estopped by the actions of these two local offices from saying that the claimant did not attend at the local office in accordance with the Regulations.

"The appeal is, therefore, allowed."

#### **Case No. CUB-38. (21 May, 1945)**

**Held:** That employment as a window dresser and sales clerk was suitable employment for a stenographer who had been five months unemployed.

The material facts of the case are as follows:

After approximately five months' unemployment the claimant, a married woman aged 27, previously employed as a stenographer, refused to apply for a situation as a window decorator and sales clerk with an employer in the city in which she resided. The insurance officer disqualified her for six weeks for failing to apply for the employment notified to her, but the court of referees unanimously allowed the claim and gave as its reasons that "where claimants have had technical training and are experienced in a skilled trade, such as stenography, it is not reasonable in the absence of special circumstances to insist on their making a complete change of occupation and sacrificing their training and experience."

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"Section 31 provides that an insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that he has declined an offer of employment of a kind other than employment in his usual occupation at wages lower, or on conditions less favourable than those which he might reasonably have expected to obtain, having regard to those which he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed.

"There is a proviso to the effect that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.

"I find that in the circumstances of this case five months constitute a reasonable lapse of time, after which employment should not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the claimant, as it allowed the claimant adequate opportunities of obtaining employment which was in keeping with her training and experience. The claimant has not shown good cause for failure to apply for the employment which was notified to her, and which I find was suitable.

"The appeal by the insurance officer is therefore allowed and the applicant disqualified for receipt of benefit for a period of six weeks beginning January 25, 1945."

### **Case No. CUB-39. (15 June, 1945)**

**Held:** That remuneration must be based on the rate of wages prevailing in the district in which the employment is situated, and that a claimant who will accept neither full-time nor permanent part-time work is not available.

The material facts of the case are as follows:

The claimant was last employed for about two weeks as a stenographer at a salary of \$18.65 a week, her hours of work being from 9.00 a.m. to 3.00 p.m. She moved to a much smaller city and, three months after separating from her employment, made claim for benefit and registered as a stenographer or bookkeeper. Ten days later she was notified of a position as a clerk at a salary of at least \$75 a month, depending on qualifications. She refused to apply for the position because she wanted only part-time work, so that she could be home to get her husband's meals. She was disqualified for a period of six weeks because she had, without good cause, refused to apply for a situation in suitable employment, and an additional disqualification was imposed on the ground that she was not available for work. The court of referees unanimously decided that the employment was not suitable, as it was at a lower salary than that which she had previously earned, and, having so decided, did not deal with the question of availability.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"The first ground of appeal raised by the insurance officer is that consideration of the remuneration must be based on the rate of wages prevailing in the district where the employment was offered, and not in the district where the claimant previously worked. I agree with the insurance officer on this point. It was established that the prevailing rate of wages in the district of ..... for stenographers is from \$75.00 to \$90.00 per month.

"The second ground of appeal is that the court of referees should have dealt with the question of the claimant's availability for work. I also agree with the insurance officer on this point. As I have stated in previous decisions, the question of suitability of employment and availability for work are closely inter-related. I feel that the claimant's domestic responsibilities were not such as to render the employment offered unsuitable on account of the hours of work, or for the reason that she could not be home to prepare her husband's meals.

"The claimant was not willing to accept full-time work, and it appears also that she would not accept permanent part-time work. In view of these circumstances I find that the claimant has so limited her sphere of availability as to render herself, for all practical purposes, not available for work. I therefore find that the claimant has, without good cause, refused, or failed to apply for a situation which was suitable in her case and which was duly notified to her by the local office of the Commission.

"The appeal of the insurance officer is therefore allowed and the claimant disqualified for a period of six weeks beginning November 10, 1944."

#### **Case No. CUB-40. (18 June, 1945)**

**Held:** That a claimant who has been allowed to resign his position rather than be discharged for insubordination is subject to disqualification for voluntarily leaving his employment without just cause.

The material facts of the case are as follows:

The claimant was employed as a clerk from October 23, 1944 to December 30, 1944, and on making a claim for benefit stated that he had left his employment voluntarily because he was not satisfied with the working conditions and because his employer refused to transfer him to another department. The latter reported that the claimant had been insubordinate and had been informed that his services were no longer required, but that as he had expressed dissatisfaction with the wages paid to him, he had been released on that ground.

The insurance officer disqualified the claimant from receipt of benefit for a period of six weeks for having voluntarily left his employment without just cause. On appeal, a court of referees found that the claimant left voluntarily after his employer had advised him of the intention of dismissing him for insubordination, and that he had been guilty of insubordination.

The claimant appealed to the Umpire, with the permission of the chairman of the court.

#### **DECISION**

The appeal was dismissed.

"The court of referees, having had the opportunity of hearing the claimant and the claimant's employers, came to the unanimous conclusion that the claimant should be disqualified on the ground that he left his employment voluntarily without just cause. I find no reason to disturb this decision and I, therefore, disallow the claimant's appeal."

#### **Case No. CUB-42. (27 June, 1945)**

**Held:** That a reduced period of disqualification imposed by a court of referees was not warranted when it appeared that there were no extenuating circumstances and that the court had reduced the period through confusing the points at issue.

The material facts of the case are as follows:

The claimant was employed as a carpenter from May 1944 until January 6, 1945. He made claim for benefit by mail and the claim was

allowed. On March 8, 1945, he was notified by registered letter of suitable employment as a carpenter, wages 75 cents per hour for rough carpenters and \$1.00 per hour for finishing carpenters, for which he refused to apply, stating that he would report to the local office on March 14. He was disqualified for a period of six weeks commencing on March 9.

On March 14 he was notified of employment as a carpenter at 90 cents per hour for which he refused to apply because the rate of pay was lower than the agreed rate. A court of referees unanimously confirmed the insurance officer's disqualification, but reduced the period to five days.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"On March 14 the ..... local office offered him employment as a carpenter at ..... at 90 cents per hour. The claimant refused to apply for the employment offered because he alleged that he was a member of the United Brotherhood of ..... and ..... and could not accept a rate of pay of 90 cents per hour while, according to the agreement in force, he should have received \$1.00 per hour.

"The court of referees unanimously confirmed the insurance officer's disqualification in respect to the claimant's first refusal to accept the employment notified, but reduced the period to 5 days and disqualified the claimant from March 9, 1945, to March 14, 1945.

"The insurance officer appealed to me from the decision of the court of referees in respect to the reduced period of disqualification.

"I have reviewed the record of this appeal and I think that perhaps some confusion was created in the minds of the members of the court of referees by the fact that the claimant was offered two positions at 5 day intervals by two different local offices and at different wage rates.

"The question at issue must be placed in its proper setting. The question as to the second refusal of employment by the claimant was not before the court of referees. The real point at issue was whether or not the first refusal was justified. The court of referees properly held that the first refusal was not justified and, therefore, the logical conclusion is that the claimant ought to be disqualified. Upon reviewing all the circumstances of the case I find no reason for reducing the period of disqualification imposed by the insurance officer. The second refusal is not related to the first. In other words, the second offer of employment was at a different location than the first. Were we concerned with the question as to whether or not the claimant should be disqualified for his second refusal, we would then have to take into consideration his reasons for refusing that second offer, but it is clear that this appeal is only concerned with the first refusal.

"I find the claimant, without just cause, refused or failed to apply for a situation at ..... which I consider was suitable employment within the meaning of Section 43(b) (i) of the Act. Accordingly, the appeal of the insurance officer is allowed and the disqualification of the claimant restored, namely, the period of six weeks commencing March 9, 1945, and ending on April 19, 1945."

**Case No. CUB-43. (27 June, 1945)**

**Held:** That a government pensioner whose salary as a government employee would be reduced by the amount of his pension, had just cause for voluntarily leaving his employment.

The material facts of the case are as follows:

The claimant, 68 years of age, was employed as a messenger by the Dominion Government at a salary of \$89.12 per month, from March 1, 1943 to November 15, 1944. He was a military pensioner, in receipt of a pension of \$77.53 per month. On November 14, 1944, he was advised that he could not receive a salary from the Dominion Government and at the same time receive his pension. He thereupon resigned voluntarily and made application for benefit.

The insurance officer considered that he had not shown just cause for leaving voluntarily, and disqualified him from receipt of benefit for a period of six weeks. This decision was sustained by a majority decision of a court of referees.

The claimant appealed to the Umpire.

**DECISION**

The appeal was allowed.

"The facts disclose that at the time the claimant entered the employ of the [Department] he was not aware of the fact that his pension would be reduced by the amount of his salary, and on November 14, 1944, when he was advised that his pension would be reduced, he was also informed that he would have to refund \$1,589.37, which would be taken off his pension cheque at the rate of \$7.75 per month.

"It appears that if the claimant had elected to work in private industry he would have been entitled to continue to receive his full pension and salary. If he had remained with the [Department] he would have been working, in effect, for \$11.59 per month. In view of these circumstances, I am of the opinion that the claimant had just cause for voluntarily leaving his employment.

"In view of all the circumstances, the claimant's appeal is allowed."

**Case No. CUB-44. (27 June, 1945)**

**Held:** That where the question at issue is one of fact, and the claimant appears in person, a court of referees is in the best position to make a decision on the evidence presented, and that a worker in a munition industry, working at other than her usual occupation, after three months of unemployment, should have less than the maximum period of disqualification when she refused to apply for work in her usual occupation at a wage reduction of one-third of her last wage.

The material facts of the case are as follows:

The claimant, female, single and 30 years of age, was employed as an instrument maker in an aircraft plant from April, 1942, to November 17, 1944, at a wage of 70 cents per hour, when she was laid off. On January 23, 1945, she made claim for benefit, which was allowed. She registered for employment as a receptionist.

On February 12 the local office notified her of employment in a department store as either sales clerk or elevator operator at the pre-

vailing rate of \$15.39 per week. She refused to apply and the insurance officer disqualified her for a period of six weeks. Her employment history showed that she had previously worked as a sales clerk for ten years.

A court of referees found, by a majority decision, that the claimant did not have good cause for refusing to apply, but reduced the period of disqualification to three weeks owing to the difference between the salary offered and the wage which she had previously earned.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The court of referees heard the claimant personally and also the local officer of the Commission. The claimant contended that she was only offered the position of elevator operator and she refused because she claimed that the operation of an elevator made her dizzy, although she then admitted that she did not give this reason to the officer of the Commission. The officer of the Commission stated that the claimant was offered the position of sales clerk or that of elevator operator.

"The court of referees, by a majority decision, found that the claimant did not have just cause for refusing to accept the employment offered, which was considered suitable, but in view of the difference in wages between the position she formerly occupied and that which was offered to her, the court reduced the period of disqualification from 6 weeks to 3 weeks, commencing February 12, 1945.

"The claimant appealed to me from the decision of the court of referees.

"The question at issue is one of interpretation of the facts, namely, whether or not the claimant's version of what transpired should be accepted, or the version given by the local officer of the Commission.

"The court of referees had the advantage of hearing the claimant personally and was in a position to judge her credibility and demeanour, therefore, I feel there is no reason why I should disturb the court's decision, based on its appreciation of the evidence presented. I would therefore disallow the claimant's appeal and sustain the court of referees' decision to disqualify the claimant for a period of three weeks, commencing February 12, 1945."

## Case No. CUB-45. (13 July, 1945)

**Held:** That just cause for voluntary separation had not been established by a married woman who left her employment to be with her husband who was on active service in the armed forces and therefore could have no permanent domicile.

The material facts of the case are as follows:

The claimant, a married woman, left her employment to follow her husband who was on active service in the armed forces, and who had been transferred to another station. She was disqualified by the insurance officer for a period of six weeks for voluntarily leaving her

employment without just cause and her appeal to the court of referees was allowed by a majority decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The insurance officer's main ground of appeal is that by reason of the nature of the services performed by members of the armed forces the claimant's husband was only temporarily located at P....., and that he was at all times subject to immediate transfer and that in that sense he could be said to be only temporarily employed at P.....; consequently the claimant was not justified in giving up her position to follow him.

"It appears that the claimant's husband enlisted in the R.C.A.F. at E..... in September, 1942, as an airframe mechanic. Since his enlistment, the claimant's husband has been stationed at E..... for eight months, at W..... for seven months, at P..... for four months.

"The facts of this case are not in dispute. The point at issue is whether a married woman is justified, under the circumstances outlined above, in leaving her employment voluntarily to follow her husband, a member of the armed forces.

"While a wife has a legal and moral obligation to live with her husband wherever he has established his residence or domicile, one cannot disregard the unusual circumstances brought about by a state of war. When a man joins the armed forces he becomes subject to military discipline and is not free to select his residence as in ordinary times and is subject to posting to whatever military establishment the authorities may designate at any time. In the ordinary sense of the word, the location at which he is posted by the military authorities can hardly be regarded as his residence or domicile. Further, the state of war has resulted in congested living conditions, travel restrictions, and grave difficulties would occur if the wives of those in the armed forces were to follow their husbands from place to place.

"In view of all of these circumstances, I find that the claimant has not shown good cause for voluntarily leaving her employment and the appeal of the insurance officer is therefore allowed and the disqualification imposed by the insurance officer for a six-week period is restored."

## Case No. CUB-46. (13 July, 1945)

**Held:** That employment as a packer at a wage of 32 cents per hour was suitable employment for a married woman, unemployed for four months, who had worked for nearly three years as a sheet metal worker in a munition industry at a wage of 65 cents per hour, when work in the latter occupation was no longer available, (the claimant having previously worked as a packer).

The material facts of the case are as follows:

After approximately four months' unemployment the claimant, a married woman, aged 24 years, previously employed in war industry

as a sheet metal worker at a rate of pay of 65 cents per hour, refused to apply for a vacant situation as a packer in a biscuit factory at a rate of pay of 32 cents per hour. The reason given for refusal was that the wages were too low. She had previously refused employment as a sheet metal helper. The insurance officer disqualified her for a period of six weeks for refusing to apply for the position, but the court of referees unanimously set aside the disqualification.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The appeal is of unusual interest and importance and perhaps it is the forerunner of a number of problems arising out of the transition from a wartime economy to a peacetime economy. Prior to her employment in the aircraft factory the claimant had been employed for some nine months as a packer in a biscuit factory. Then as a consequence of the change brought about in Canadian manufacturing as a result of the state of war she succeeded in obtaining employment in an aircraft plant and continued in that employment as a sheet metal worker for a little over two and one-half years. In her wartime employment in the aircraft factory she received a very considerably higher rate of remuneration than she had obtained in previous employment. In December of 1944 as a result of a change and reduction in this particular branch of war manufacturing she was laid off. While the claimant was unemployed, the local office, in accordance with usual practice, attempted to find other suitable employment for her, but as a result of the reduction in war production in W..... there was little or no prospect of finding for the claimant similar employment at the corresponding rate of remuneration. This became more and more evident as the period of unemployment lengthened. The local office apparently considered that a sufficient time had elapsed to conclude that there was really no prospect remaining of placing the claimant in the same type of employment and at the same rate of remuneration as she had enjoyed during the wartime expansion of Canadian industry and therefore offered her employment similar to that in which she had been engaged prior to taking this wartime employment. I note in the record that the claimant had become married in the fall of 1944 and presumably this made it impracticable to suggest that she take employment elsewhere.

"Ordinarily, and in accordance with the provisions of the Act, the local office must in the first instance attempt to place the insured person in employment in his usual occupation at his usual wages and under conditions not less favourable than those observed by agreement between employers and employees or than those recognized by good employers. If such employment is not available, then the next alternative is to try to place the applicant in some other occupation at the usual wages and under conditions not less favourable than those in the usual occupation. Then the Act goes on to provide in the proviso to Section 31 that after the lapse of such an interval from the date on which the insured person becomes unemployed, as in the circumstances of the case is reasonable, employment in some other occupation and at a lower rate

of remuneration may be offered provided the wages are not lower and the conditions not less favourable than those observed by agreement or than those recognized by good employers.

"The question then is, firstly, was there suitable employment available in the claimant's usual occupation and at her usual rate of remuneration, or secondly, was employment available in some other occupation at the usual rate of remuneration? On the record it is amply evident that the answer to both these questions is 'no'. Then the remaining question is whether a reasonable time had elapsed since the claimant became unemployed and the evidence before me would seem to indicate clearly that the answer must be in the affirmative. There had been an expansion of war production, but in this particular area and in this particular industry the expansion had apparently come to an end and a reduction became necessary. During the period while the claimant was unemployed there was ample time to determine whether there was any reasonable prospect of placing the claimant either in the type of employment in which she had most recently been engaged or in some other occupation paying a similar rate of remuneration. When it became evident that there was no reasonable prospect of placing the claimant in such employment it seems to me quite proper that the local office looked at the claimant's previous employment record in order to determine what her previous employment history had been and to determine what was now suitable employment in light of the changed conditions brought about by reduced war production. It is not possible, nor do I think it would be advisable, to lay down any general rules as to what is a reasonable time as this must necessarily depend on the particular circumstances existing in each case. In the case before me I am satisfied that a reasonable time had elapsed.

"The appeal of the insurance officer is therefore allowed and the disqualification imposed on the claimant is restored."

### **Case No. CUB-47. (13 July, 1945)**

**Held:** That probable lack of advancement in the position notified is not good cause for refusing to apply.

The material facts of the case are as follows:

After approximately five months' unemployment the claimant, a single man aged 34 years, whose registered occupation was that of office clerk, refused to apply for a situation as a bookkeeper with an employer in the city in which he resided. His reason for refusal was that he knew the employer and that there would be no advancement for him. The insurance officer disqualified him for a period of six weeks for refusing to apply for suitable employment and the court of referees unanimously upheld this decision. The chairman of the court granted the claimant leave to appeal to the Umpire.

### **DECISION**

The appeal was dismissed.

"The court of referees unanimously disallowed his appeal and expressed the opinion that the claimant should have presented himself

to the employer with a view to ascertaining whether or not the employer would give him employment. The court of referees was unanimous in finding that the claimant did not avail himself of the opportunity of suitable employment in refusing to present himself for the employment notified to him.

"The claimant appealed to me from the decision of the court of referees but there is no new evidence and on the basis of the evidence before the court of referees I am in entire agreement with their unanimous decision.

"The appeal is disallowed."

### **Case No. CUB-48. (16 July, 1945)**

**Held:** That full-time employment in her registered occupation, after being employed only on Saturdays for a period of two months, was suitable employment for a widow with domestic responsibilities who had a pattern of part-time employment; a claimant who restricts her availability to five hours' work per day for three or four days a week is not available for work; suitability of employment is a question of fact which varies for each person, and cannot be predetermined by a claimant's declaration that only certain types of work are suitable.

The materials facts of the case are as follows:

The claimant worked as a part-time sales clerk in a department store and on Saturdays in a shoe store. Her employment in the department store terminated and two months later she was notified by the local office of full-time employment in a jewellery store where the hours of work would be 9 a.m. to 6 p.m. She refused to apply for the situation, stating that she had never had other than part-time work since commencing work five years previously, due to home and family responsibilities, but that she was always willing to accept three or four days' work per week of five hours per day.

The insurance officer disqualified her for a period of six weeks for refusing to apply for suitable employment. This disqualification was removed by unanimous decision of the court of referees and the insurance officer appealed to the Umpire on the grounds that the work was suitable and that the claimant was really not available for work.

### **DECISION**

The appeal was allowed.

"The claimant was willing to accept only part-time work for a certain number of hours on specific days and not more than three days a week and would only accept work on Saturday if it was to be permanent. She states that this is due to her domestic responsibilities. The claimant has two boys, thirteen and fifteen years of age who work every night and Saturdays at a drug store, and, in addition, she operates a rooming house. The domestic responsibilities are considerable—so much so that it is difficult to see how the local office would be in a position to offer employment which would not interfere with those domestic responsibilities.

"The court of referees seems to have been of the opinion that because the claimant registered at the local office of the Commission

for a certain type of work that this registration determines what employment is suitable for the claimant. I do not think that this is so. The question of suitability of employment is a question of fact which varies for each person and cannot be predetermined simply by such means as a declaration by the claimant that only certain types of employment are suitable. The particulars given by the claimant on her registration for employment is quite properly a factor which should be taken into account in attempting to place her in suitable employment, but it is not the determining factor and is only one of the factors to be taken into account in determining what is suitable employment.

"While it is true that the claimant had been in employment which apparently allowed her at the same time to carry out her domestic responsibilities that does not imply that the only employment suitable for the claimant is employment falling within that same pattern. I am in agreement with the conclusion of the insurance officer either that the employment offered was suitable or, alternatively, that the claimant had so restricted her availability for employment as to be, for all practical purposes, not available for employment.

"The appeal of the insurance officer is, therefore, allowed and the disqualification imposed by him is restored."

#### **Case No. CUB-50. (28 September, 1945)**

**Held:** That ignorance of the provisions of the Act does not constitute good cause for antedating a claim for benefit.

The material facts of the case are as follows:

The claimant was employed as a general labourer to January 4, 1945, leaving voluntarily because of weather conditions, and again from January 23 to February 17, 1945, when he left voluntarily because the work was too hard. From this latter date until making a claim for benefit on April 19, 1945, he had only one day's employment. He asked that his claim be antedated to January 5, 1945, pleading ignorance of the provisions of the Act. His home was in a town fifteen miles from the nearest local office, where he had registered for employment early in January.

The insurance officer did not approve the request for antedating, and a court of referees, by a majority decision, upheld this decision.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The Unemployment Insurance Act has now been in effect for several years and there has been a good deal of publicity in connection with the Act and the procedure to be followed in order to obtain benefit under the Act. The insurance book contains clearly printed instructions regarding the simple procedure to be followed where an insured person wishes to claim benefit, and I have no hesitation in concluding that after this passage of time and in view of the clear instructions in the insurance book the claimant was aware or should have been aware of the pro-

cedure to be followed and that it is not incumbent upon the officers of the Commission to notify or request a person to claim benefit. I am satisfied that had the claimant expressed the slightest desire to claim benefit the local office would have provided him with all necessary information.

"I am therefore of the opinion that the claimant has not shown good cause for his delay in making application for benefit and his appeal is therefore dismissed."

### **Case No. CUB-51. (28 September, 1945)**

**Held:** That persistent tardiness, after warning, is misconduct.

The material facts of the case are as follows:

The claimant was employed as a stenographer from April 2 to April 12, 1945. Her employer reported that she was late for work nearly every morning, and was warned that tardiness would not be tolerated. On April 12 she did not report for work in the morning, and was dismissed when she came to work in the afternoon. She gave no reasons for being late.

She was disqualified for a period of six weeks for having lost her employment through misconduct, and her appeal to a court of referees was dismissed.

The claimant, with permission, appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The claimant appeared before the court of referees and was given an oral hearing. I cannot see any reason for disturbing the unanimous decision of the court of referees which had the opportunity of appreciating the demeanour and credibility of the witnesses.

"The appeal of the claimant is therefore disallowed and the claimant disqualified for a period of six weeks from April 12, 1945."

### **Case No. CUB-52. (28 September, 1945)**

**Held:** That it is not incumbent on the officers of the Commission to notify or request an insured person to make a claim for benefit. It is the responsibility of the insured person to decide if a claim is to be filed.

The material facts of the case are as follows:

Three days before separating from his employment, the claimant was granted permission by a Selective Service officer to interview employers in order to obtain other employment. This permission was renewed from time to time and, after being unemployed for two months, he finally secured employment. A short time before commencing work, he made claim for benefit and requested that it be antedated. The reason given for the delay in making his claim was that he believed it was not necessary to make a claim for benefit because he had been given permission to interview employers and he did not believe he could

make a claim on account of having received that permission. The insurance officer did not approve the application for antedating and the court of referees unanimously upheld this decision.

With permission of the chairman, the claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"In substance the basis of his appeal is that it is the duty of officers of the Commission to inform the claimant of his possible right to benefit and the procedure to be followed in order to claim benefit.

"Section 30 of the Act and Section 7 of the Benefit Regulations provide that where good cause is shown for delay in making an application for benefit the day on which the period of unemployment actually began shall be substituted for the date of the application. The question then is has the claimant shown good cause for the delay within the meaning of the Act and the Regulations.

"The Unemployment Insurance Act has now been in effect for several years and there has been a good deal of publicity in connection with the Act and the procedure to be followed in order to obtain benefit under the Act. The insurance book contains clearly printed instructions regarding the simple procedure to be followed where an insured person wishes to claim benefit, and I have no hesitation in concluding that after this passage of time and in view of the clear instructions in the insurance book the claimant was aware or should have been aware of the procedure to be followed and that it is not incumbent upon the officers of the Commission to notify or request a person to claim benefit. I am satisfied that had the claimant expressed the slightest desire to claim benefit the local office would have provided him with all necessary information.

"I am therefore of the opinion that the claimant has not shown good cause for his delay in making application for benefit and his appeal is therefore dismissed."

### **Case No. CUB-53. (28 September, 1945)**

**Held:** That refusal of an employee to go to the superintendent's office when properly requested to do so, is misconduct, the request having followed several reprimands for breach of company rules.

The material facts of the case are as follows:

The claimant worked for a paper manufacturer as a pressman from April 7, 1943, to April 19, 1945, when he was dismissed for insubordination. He made claim for benefit on April 23.

It appeared that the company had a rule that the employees were not to discuss politics during working hours, and the superintendent had warned the claimant on two or three occasions about his infractions of this rule. Finally the superintendent despatched a foreman to tell the claimant to report to the superintendent in his office. The claimant said that the superintendent could come to see him if he wished.

The insurance officer disqualified the claimant for a period of six weeks for having lost his employment because of his own misconduct. A court of referees confirmed this decision.

The claimant, with the consent of the chairman, appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"The reason for the discharge of the claimant is that of insubordination. It would appear from the evidence that the claimant refused to come to his foreman's office when properly requested to do so.

"Upon review of the facts presented to the court of referees, I see no reason for disturbing its conclusion that the conduct of the claimant amounted to insubordination.

"The appeal of the claimant is therefore disallowed and the claimant disqualified for a period of six weeks, from April 20, 1945."

#### Case No. CUB-54. (3 October, 1945)

**Held:** That a claimant had not established good cause for refusing to accept a situation in suitable employment when he alleged that acceptance of such employment would jeopardize his right to continue to be a union member, but failed to produce proof of such allegation.

The material facts of the case are as follows:

The claimant, a single man, aged 33 years, was separated from his previous employment as a result of his expulsion from the union of which he had been a member, and with which the employer had entered into a collective bargaining agreement which included a "closed shop" clause. After two months' unemployment, the claimant, on two different occasions, refused offers of employment in his registered occupation. The employments offered were with employers who operated "open shops" and the reason for the refusal, in each case, was that the claimant insisted upon being employed as a union welder, to which condition the employers would not consent. In both instances, the insurance officer disqualified him for six weeks for refusing to accept the employment and the court of referees unanimously upheld both decisions.

The chairman granted leave to appeal to the Umpire.

#### DECISION

The appeal was dismissed.

"In support of his appeal the claimant submitted to me a voluminous brief which was very well prepared, but which contains a great deal of irrelevant information. The claimant has been involved in protracted legal proceedings against the union in connection with the attempts of the union to expel him as a member, but I do not find that those proceedings, interesting though they may be, have any direct bearing on the question before me for decision. There is no doubt whatsoever that the employment offered to the claimant is

suitable employment within the meaning of the Act. Throughout his brief the claimant refers to suitable and similar employment, but, of course, the term 'similar' is one not taken from the Unemployment Insurance Act and I must confine my findings to the term 'suitable employment', which is the term used throughout the Unemployment Insurance Act.

"The essence of the appeal is the contention of the claimant that if he were to accept the employment in either of the plants which operate as open shops, he would lose his right to continue to be a member of the union, and that Section 32 of the Act provides that a claimant shall not be disqualified for refusal to accept employment if the acceptance of that employment would cause him to lose the right to be a member of the union.

"Notwithstanding the volume of the material submitted to me for consideration on this appeal, I do not find any proof whatsoever that the claimant would lose the right to continue to be a member of the union if he were to accept the employment offered in an open shop. I would expect that if there were any such union rule, it would be found in the by-laws of the union, but I have examined the by-laws with great care and find no indication of any such rule.

"The proceedings between the claimant and the union, which I have already mentioned, concerned the effectiveness of the union's expulsion of the claimant and the question whether the claimant is or is not a member of the union. I do not think the ultimate disposition of that question affects my decision in any way. If the claimant is not a member of the union, then Section 32 of the Act, already mentioned, has no bearing on the case. If he is a member of the union, then, as already indicated, there is no proof that his membership would be affected by acceptance of employment in an open shop.

"The appeal is not allowed."

#### **Case No. CUB-56. (15 October, 1945)**

**Held:** That a claimant who has voluntarily left non-insurable employment without just cause is subject to disqualification therefor; the principle underlying the Act is that the risk insured against is the risk of involuntary unemployment; a person is disqualified for the period of employment which has been lost, up to a maximum period of six weeks, if his unemployment is brought about by his own actions.

The material facts of the case are as follows:

The claimant was hired to paint the house of his employer, a farmer, and, after having worked for two and one-half weeks, left voluntarily before the job was completed. The insurance officer disqualified him from receipt of benefit for a period of three weeks for having voluntarily left his employment without just cause, the period of three weeks being figured as the approximate length of time which would have been required to complete the job.

A court of referees allowed his appeal on the ground that a claimant should not be disqualified for voluntarily leaving excepted employment.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The relevant Section of the Act reads as follows:

- "'43. An insured person shall be disqualified for receiving benefit—  
(c) if he has been discharged from his employment by reason of his own misconduct or if he voluntarily leaves his employment without just cause;'

"The principle underlying this particular provision of the Act and as a matter of fact, of the Act as a whole, is that the risk insured against under the Act is the risk of involuntary unemployment. Adopting this principle a person is disqualified for the maximum period specified under the Act if his unemployment is brought about by his own actions.

Following that principle I cannot see how or why a distinction could be drawn between a man voluntarily leaving insured employment or voluntarily leaving uninsured employment. In either event the fact is that he has voluntarily caused his own unemployment. I have no hesitation in saying that where the term 'employment' is used in Section 43(c), it must be given its ordinary meaning and not limited to insurable employment. There is nothing in the section to suggest the limited interpretation arrived at by the court of referees.

"The appeal of the insurance officer is therefore allowed and the claimant disqualified for a period of three weeks from the date on which my decision is communicated to the claimant."

## Case No. CUB-58. (19 November, 1945)

**Held:** That a claimant who was employed as a sexton at a salary of \$35.00 per month was not engaged in a subsidiary employment, because of the amount of salary received, (over \$1.00 per day), even though he was assisted by his son from time to time.

The material facts of the case are as follows:

The claimant's claim for benefit was allowed as of December 7, 1944. In March of 1945 the Commission was advised that the claimant had been employed since December 15, 1944, as a sexton at a salary of \$35.00 per month. The insurance officer disqualified the claimant from receipt of benefit from December 15, 1944, as he had not proved that he was unemployed. An appeal to a court of referees was dismissed, but the chairman allowed an appeal to the Umpire.

## DECISION

The appeal was dismissed.

"It is quite clear that the occupation as sexton could be followed in addition to the usual employment and outside the claimant's ordinary working hours, but it is equally clear that the remuneration from the part-time employment exceeded a daily average of \$1.00. This is not changed in any way by the fact that the claimant's son assisted him from time to time. I therefore find that the claimant

must be deemed to be not unemployed during the period in question and, consequently, he has not satisfied the second statutory condition.

"The appeal is dismissed."

#### **Case No. CUB-59. (19 November, 1945)**

**Held:** That a claimant is not justified in refusing full-time employment in her usual occupation at the prevailing salary rate, although she had been paid at a higher rate in her former part-time employment.

The material facts of the case are as follows:

After approximately three months' unemployment the claimant, a married woman, aged 43 years, refused to accept a situation in her registered occupation with an employer located about a half-hour by street car from her residence. Her previous employment had been part-time and the remuneration she received from this part-time employment was at a higher rate than the remuneration for the full-time employment offered. The insurance officer disqualified her for six weeks for refusing to accept suitable employment and the court of referees unanimously upheld this decision, but reduced the period of disqualification to three weeks.

The chairman granted the claimant leave to appeal to the Umpire.

#### **DECISION**

The appeal was dismissed.

"Section thirty-one of the Act provides that 'an insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that . . . he has declined . . . an offer of employment in his usual occupation at wages lower, or on conditions less favourable, than those observed by agreement between employers and employees, or failing any such agreement, than those recognized by good employers'. It is possible that the claimant has read this provision of the Act as meaning that employment is not suitable if the rate of wages is lower than she has been receiving. However, that is not the effect of this provision. Rather, the employment may be suitable employment even though the wages are less than the claimant has recently been receiving if the wages offered are in line with those observed by agreement between employers and employees or those recognized by good employers. It is, therefore, a straight question of fact. The claimant had been receiving rather good wages for less than the normal hours of employment but I think it reasonable to believe that the rate she had been receiving was somewhat higher than normal. The information before me establishes quite conclusively that the rate of wages offered to the claimant was the prevailing rate in the district for a person of her qualifications at the time of the offer of employment. I, therefore, find that the claimant refused an offer of suitable employment and the disqualification will, therefore, stand. While there is some doubt in my mind as to the court's decision to reduce the disqualification period, I do not think it necessary to vary that finding."

**Case No. CUB-60. (19 November, 1945)**

**Held:** That a claimant who was discharged because he had left his employment during working hours, had gone to a hotel where he consumed liquor and dinner, and was thus absent for several hours, was rightly disqualified because he had lost his employment on account of his own misconduct, even though he was accompanied by his foreman.

The material facts of the case are as follows:

The claimant was employed as a senior checker at a munitions plant from 1941 to April 25, 1945, at a wage of 79 cents per hour, his employer reporting that he was discharged for inefficiency, and later stating that the claimant had left the plant during working hours to go to an adjacent hotel. On his claim for benefit being made on April 30 he was disqualified by the insurance officer for a period of six weeks for having lost his employment by reason of his own misconduct.

At a hearing before a court of referees the court found that the following circumstances had occurred on April 10, 1945,—the claimant had punched his time-card at 7.15 a.m., had been transferred to a new department where he made the acquaintance of his new foreman; at 11.34 a.m. the claimant, the foreman and three other employees left the plant for more congenial surroundings at a nearby hotel where they partook of some spirituous refreshments and ate dinner; the party returned to the plant at 3 p.m., and the claimant “punched out” shortly afterwards.

The affair was subsequently investigated, and the claimant was given notice which took effect on April 25. The court upheld the insurance officer's decision.

The claimant, with the approval of the chairman of the court, appealed to the Umpire.

**DECISION**

The appeal was dismissed.

“The claimant suggests that his conduct could not be regarded as misconduct, by reason of the fact that he absented himself from his work in company with his foreman and that this constituted permission to leave the plant. I cannot attach much weight to that argument. I can see little room for doubt that the claimant's wilful absence from the plant during working hours in the circumstances outlined is misconduct.

“The appeal is dismissed.”

**Case No. CUB-61. (19 November, 1945)**

**Held:** That a married woman who had been employed on war work during the evening hours, and who, on the termination of this work, restricted her availability to the same work and the same hours of work, was not available for work; in such cases the issue would be clearer if suitable employment could be offered.

The material facts of the case are as follows:

The claimant, a married woman 47 years of age, was employed by a Registrar who worked under the National Resources Mobiliza-

tion Act, and was released from her employment on April 30, 1945, owing to lack of work. On May 1 next she made a claim for benefit, saying that she was able to work in the same kind of work that she was performing in the Registrar's office, i.e., as extra night clerk, and that she was not free to work in the daytime as she had her house to look after.

The insurance officer considered that she was not available for work and disqualified her from receipt of benefit for a period of six weeks. A court of referees, by a majority, upheld this decision.

The claimant appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"This case is not unlike many which I think will arise out of conditions brought about by a state of war. At the peak of our wartime activities we were able to meet our production goals only through adding to the number of persons ordinarily engaged in gainful employment. At this time there was a good deal of employment at hours other than what is the usual pattern in normal times and many married women not ordinarily employed found it possible to assist in the national war effort in this way.

"However, with the cancellation of war contracts and a slackening in the acute manpower shortage we are rapidly reverting to the normal hours of employment, and there are obviously fewer demands for the services of married women in employment during hours which would not conflict with their ordinary household duties.

"In this case the claimant made it perfectly obvious at the time of registering her claim for benefit that she would not consider any employment except under conditions substantially similar to those under which she had been working during the war period. For the reasons already indicated, there is very little of that type of employment now available in the claimant's district, and there is little real prospect of placing the claimant, or others in similar circumstances, in the type of employment which was fairly common during the war years. The claimant has made it quite clear that she will not consider any other employment which might be available, and I therefore find that she has not satisfied the third statutory condition and must therefore dismiss the appeal.

"I might add that in many cases of this nature the issue might be clearer if the local office were to offer the claimant whatever employment is available and appears to be suitable."

#### Case No. CUB-62. (21 January, 1946)

*Held:* That payment of benefit to an unemployed claimant for statutory holidays is not prohibited by any section of the Act.

The circumstances of the case are shown in the Umpire's decision:

#### DECISION

"The claimant was employed by the ..... from May 3rd, 1940 until June 30, 1945, when he was laid off due to

lack of work. He applied for benefit on July 4, 1945, and the application was allowed. He signed the unemployment register thereafter but the insurance officer decided that benefit be not paid for Labour Day (September 3rd, 1945) and Thanksgiving Day (October 8th, 1945), on the ground that they were non-compensable days by reason of paragraph (c) of Section 33 of the Act.

"The claimant appealed to the court of referees from the decision of the insurance officer and the court of referees unanimously sustained the decision of the insurance officer, but the chairman granted the claimant leave to appeal to me in order to obtain a final interpretation of the Act in view of the importance of the question involved. The court also referred in its decision, to Order in Council P.C. 4671, dated January 2nd, 1943, which determines the wartime statutory holidays for the Civil Service and wartime holidays to be observed by employers and employees generally.

"The question before me therefore, is whether, in view of the provisions of Section 33 (c) of the Act, the claimant shall not be deemed to be unemployed on Labour Day and Thanksgiving Day.

"Paragraph (c) of Section 33 of the Act reads as follows:

"'An insured person shall not be deemed to be unemployed—

"“(c) on any day which is recognized as a holiday for his grade or class or shift in the occupation or at the factory, work-shop or other premises at which he is employed unless otherwise prescribed;”

"It is my opinion that the words 'at which he is employed' in Section 33(c) clearly indicate that reference is made to holidays at a factory where a claimant is actually employed. Their effect is to prevent claimants who are still employed at a factory from obtaining benefit on days which are holidays at that factory.

"If this paragraph were to be interpreted otherwise it would have the effect of depriving a claimant forever of benefit on any day which was recognized as a holiday at a factory where he had worked, although he has completely separated from that factory.

"A close study of the text of the whole of Section 33 shows quite clearly that whereas paragraphs (a) and (b) deal with periods where the claimant's employment has *terminated*, paragraphs (c) and (d) deal with periods during which the claimant *is* employed. The words used in paragraph (c) are clear and unambiguous and I do not see how they can possibly be extended to cover also the case of a claimant who has actually separated from his employment.

"It may be contended from the very last words of paragraph (c): 'unless otherwise prescribed', that the Commission has the right to prescribe that certain holidays are applicable to all claimants, whether or not they have completely separated from their last employment. I do not think that this argument can succeed. The only effect that these words could have, in my opinion, would be to authorize the Commission to make regulations allowing claimants, who have not completely separated from their employment, to claim benefit on days which are recognized as holidays by their employers. In other words, the right to benefit of claimants for a holiday, can be enlarged, but not restricted.

"It is my opinion that paragraph (c) of Section 33 of the Act must be interpreted as applying only to claimants who are actually employed but who are laid off for a day or more and who claim benefit for a holiday. In the present case the claimant was completely separated from his employment and is not affected by any holiday or holidays which occurred at the factory where he was last employed.

"The Order in Council referred to by the court of referees also does not have any application in this case, as it refers to employers and employees and the same comments made concerning Section 33(c) of the Act are applicable to the Order in Council.

"The claimant's appeal is therefore allowed."

#### **Case No. CUB-63. (21 January, 1946)**

**Held:** That desire for increased salary does not provide just cause for voluntarily leaving one's employment; assurance of another situation should be obtained before leaving.

The material facts of the case are as follows:

The claimant was employed by a textile company as a nurse at a salary of \$22.00 per week from January, 1935, until July 14, 1945, when she left her employment voluntarily in order to better her financial position. She was disqualified from receipt of benefit for a period of six weeks for this voluntary leaving.

In appealing to a court of referees the claimant stated that she was a qualified public health specialist, and her former work did not measure up to her ability, nor was the salary that which she would receive in the occupation for which she was trained. The court removed the disqualification.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"It would appear that the decision of the court of referees was influenced by the fact that the employer had refused an increase in salary to the claimant and then immediately after she left offered a higher salary for another nurse.

"The Act provides that a claimant shall be disqualified if he voluntarily leaves his employment without just cause. The question to decide is therefore, whether the claimant had just cause for leaving her employment voluntarily.

"She had been employed for ten years in the same employment at a rate of remuneration which was the prevailing rate in the district and in my opinion refusal of an increase, alone, does not constitute just cause for leaving. The claimant's desire to better her position was understandable, but in the absence of any reason which would compel her to leave her employment she should have obtained the assurance of another position before terminating her present employment.

"There appears to be nothing which would have prevented the claimant from making inquiries from various nurses' associations and registries in order to obtain suitable employment as a nurse. She possessed the requisite qualifications and if, for example, she had obtained the assurance of another situation and left her employment and if that situation had not materialized, it would be probable, in that case, that the claimant would have qualified for the receipt of benefit. But in the present instance the claimant chose to leave her employment without taking these most elementary precautions against the event of her unemployment. I therefore find that the claimant voluntarily left her employment without just cause and that she should be disqualified for a period of six weeks from the date on which my decision is communicated to her.

"The appeal of the insurance officer is allowed."

#### **Case No. CUB-64. (21 January, 1946)**

**Held:** That bench work at current pay rate is suitable employment for an rivetter after three months' unemployment, and inability to return home for noon meal of family does not justify refusal of referral.

The material facts of the case are as follows:

The claimant, married but separated from her husband, went on benefit on separation from her employment as a rivetter in an aircraft factory located two blocks from her home. Three months later she was notified of employment on bench work in a factory situated at a distance of fourteen blocks from her home, at a wage of 18 cents an hour lower than that which she had previously received. She refused to apply for the work, giving as her reasons that it was not her usual occupation, that wages were too low and that, because of the distance between her home and the work, it would not have been possible for her to be home at meal-times to prepare meals for her two school-age sons. The insurance officer disqualified her for a period of six weeks for refusing to apply for suitable employment, and this decision was reversed by the court of referees.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The claimant in this case contended that the wages offered were too low and she stated that owing to her domestic circumstances the employment offered was not suitable. The question before me is to determine whether the employment offered to the claimant was suitable in the circumstances, and whether she has refused, without good cause, to apply for the employment offered.

"Various factors must be taken into consideration in order to determine suitability of employment, such as the nature of the claimant's usual occupation, the rate of wages previously obtained, the rate of wages offered, the degree of skill and experience acquired and required.

"The proviso to sub-paragraph (iii) of Section 31 of the Act is particularly relevant in this case. The effect of this proviso is that, after the lapse of such an interval of time from the date on which a claimant becomes unemployed as is reasonable in each case, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the claimant, if it is at the prevailing wages of the district.

"In this case, since the claimant had been unemployed for over three months when the offer of employment was made, I find that sufficient time had elapsed and the employment offered was, in view of the circumstances, not unsuitable by reason that it was employment other than her usual occupation and at wages lower than she previously received.

"I agree with the insurance officer that boys of 12 and 15 could have carried their lunch to school. The circumstances of the claimant are therefore not such as to render the employment offered unsuitable.

"I therefore find that the employment offered was suitable and that she did not have good cause for refusing to apply for the employment offered.

"The appeal of the insurance officer is therefore allowed and the claimant disqualified for a period of six weeks from the date on which my decision is communicated to her."

#### **Case No. CUB-65. (21 January, 1946)**

**Held:** That no right of antedating exists when claimant had been advised of his benefit rights when first registering at the local office.

The material facts of the case are as follows:

Six days after he was laid off from his employment the claimant registered for employment at the local office of the Commission. He did not file a claim until approximately six weeks later. After a few days he requested that his claim be antedated to the day he registered for employment, stating that he understood he had also filed a claim for benefit on that day. The insurance officer allowed the claim from the date it was filed but did not allow the application for antedating, and this decision was upheld by a court of referees when evidence was produced showing that a notation appeared on the registration for employment form, initialed by the claimant, to the effect that he had been notified of the nature of his benefit rights.

With permission of the chairman, the claimant appealed to the Umpire.

#### **DECISION**

The appeal was disallowed.

"The claimant was offered the opportunity of appearing before the court of referees but did not choose to do so. The court of referees, on the evidence before it, disallowed his appeal. I find no reason to disturb the unanimous decision of the court of referees.

"The appeal of the claimant is therefore disallowed."

**Case No. CUB-66. (21 January, 1946)**

**Held:** That various factors must be taken into consideration in order to determine suitability of employment, e.g., the nature of the claimant's usual occupation, the rate of wages previously obtained, the rate of wages offered, the degree of skill and experience acquired and required. A new type of employment for a semi-skilled worker, with a drastic reduction in wages, is not suitable after one month of unemployment.

The material facts of the case are as follows:

The claimant, an unmarried woman aged 21 years, was employed as an inspector in a munitions factory at a wage of \$1.00 per hour when she was laid off on June 21, 1945, owing to a reduction of staff. Her claim for benefit, made the next day, was allowed.

A month later the local office notified her of employment as a general factory worker at a wage of 45 cents per hour, for which she refused to apply. The insurance officer disqualified her from receipt of benefit for a period of six weeks, and a court of referees confirmed this decision.

The claimant appealed, with the permission of the chairman, to the Umpire.

**DECISION**

The appeal was allowed.

"The question for me to decide is whether the employment offered to the claimant was suitable. Before I can determine whether the claimant had refused, without good cause, to apply for the employment notified, it must be established that the employment was suitable.

"Various factors must be taken into consideration in order to determine suitability of employment, such as the nature of the claimant's usual occupation, the rate of wages previously obtained, the rate of wages offered, the degree of skill and experience acquired and required.

"The proviso to sub-paragraph (iii) of Section 31 of the Act is particularly relevant in this case. The effect of this proviso is that, after the lapse of such an interval of time from the date on which a claimant becomes unemployed as is reasonable in each case, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the claimant, if it is at the prevailing wages of the district.

"In this case, since the claimant had been unemployed for only one month when the offer of employment was made, I find that sufficient time had not elapsed and the employment offered was, in view of the circumstances, not suitable by reason that it was employment other than her usual occupation and at wages lower than she previously received.

"The claimant's appeal is therefore allowed."

**Case No. CUB-67. (21 January, 1946)**

**Held:** That a married woman must so arrange her domestic affairs that she can, after a reasonable lapse of time, accept employment away from her home area.

The material facts of the case are as follows:

The claimant, a married woman, aged 23 and separated from her husband, was employed as a clerk in a grocery store at T.... from March 1 to April 27 of 1945. She and her ten-month-old child were then living

with her sister. Her claim for benefit, made on May 16, 1945, was allowed. Later the claimant moved to the home of her parents in the very small village of S.....

On August 24, 1945, she was notified by the local office of permanent employment as a sales clerk at a salary of \$60.00 to \$65.00 per month, or more, depending on experience. This was above the prevailing district rate. She had earned \$17.65 weekly in her last employment. She refused to apply for this employment at C...., which is 35 miles from S...., stating that she would have to pay practically all her earnings for her room and board and for the upkeep of the child. The insurance officer disqualified her for a period of six weeks for having refused, without good cause, to apply for a situation in suitable employment. A court of referees allowed her appeal.

The insurance officer appealed to the Umpire.

#### DECISION.

The appeal was allowed.

"The insurance officer appealed to me from the decision of the court of referees. His ground of appeal is that the failure of the claimant to make appropriate arrangements for the care of her child is no justification for her refusal of the employment. He contended that it was her responsibility to arrange her domestic affairs so as to enable her to accept suitable work when it is offered.

"He further stated that as she moved from T.... where there were prospects of work, to S...., where the opportunities were practically non-existent, she should have been prepared to move away, since she had had a reasonable time to find suitable employment near her place of residence.

"The question I have to decide is whether the claimant had good cause for refusing an offer of suitable employment. Her domestic circumstances must be taken into consideration when determining the suitability of employment offered, but there does not appear to have been any serious obstacle to her accepting the work offered. As she stated herself, she could have taken the child with her and placed it in a day nursery until the end of the month and at that time she could have left it with her parents.

"In my opinion, the domestic circumstances of the claimant were not such as to render the employment offered unsuitable. I therefore find that the claimant has, without good cause, refused an offer of suitable employment.

"The appeal of the insurance officer is therefore allowed and the claimant disqualified for six weeks from the date on which my decision is communicated to her."

#### Case No. CUB-68. (21 January, 1946)

**Held:** That a miner who moved some distance from possible employment at the mines and refused to take employment which would interfere with the operation of his farm was not available for work. Surface work at a mine is suitable employment for a miner who is physically unfit for underground work.

The material facts of the case are as follows:

The claimant, who was physically unfit to resume his usual occupation of underground mine worker, was after three months' unemploy-

ment notified of work as a surface worker at a mine 26 miles from the farm on which he resided. He refused to apply for this work and the local office commented that he must have work where he could get home every day to look after his stock and care for his young family.

The insurance officer disqualified him for a period of six weeks for refusing to apply for suitable employment but a court of referees reversed this decision.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The insurance officer appealed to me from the decision of the court of referees. The questions for me to decide are whether the employment offered was suitable and whether the claimant was available for work. The record discloses that the previous occupation of the claimant was that of underground worker in a gold mine. It was only on the occasion of his claim for benefit that he stated that he was a farmer. I have no doubt that the employment offered was well within his usual range of activities and insofar as the occupation is concerned, I am of the opinion that the employment offered to him was not unsuitable.

"The second question concerns the availability for work of the claimant. It would appear that there is little, if any, prospect of employment in the district to which he moved. Had he remained in . . . his chances of employment would have been greater. It would also appear that he has so restricted his sphere of availability in refusing to take employment which would interfere with the operation of his farm that, for all practical purposes, he was not available for work.

"The appeal of the insurance officer is therefore allowed and the claimant disqualified for six weeks from the date on which my decision is communicated to him."

#### Case No. CUB-69. (14 February, 1946)

**Held:** That a period of time spent in a penitentiary may not be used as a basis for granting an extension of the two-year period.

The material facts of the case are as follows:

The claimant was last employed from September 1, 1942 to March 13, 1943 and was incarcerated in a penitentiary from August 23, 1943 until September, 1945. He made claim for benefit on October 11, 1945 and applied for extension of the two-year period, requesting that for this purpose consideration be given to the period of his confinement. The extension was not granted by the insurance officer and his decision was reversed by the court of referees.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"Section 29(2) of the Act provides that if an insured person proves that he was, during any period falling within the two years specified

in the first statutory condition, incapacitated for work by reason of some specific disease or bodily or mental disablement, or employed in any excepted employment, or engaged in business on his own account, then the period of two years may be increased by such periods of incapacity or of such employment or business engagement, but so as not to exceed in any case four years.

"It cannot be said that the claimant, while in jail, was incapacitated for work by reason of some specific disease, or some bodily or mental disablement, nor that he was employed in any excepted employment, or engaged in business on his own account. The claimant, therefore, does not come within any of the provisions of subsection (2) of Section 29 of the Act and the extension of the two-year period should not have been granted.

"The appeal of the insurance officer is therefore allowed, and the extension of the two-year period, for the purposes of the first statutory condition, disallowed."

#### **Case No. CUB-70. (28 May, 1946)**

**Held:** That a claimant must have sixty daily contributions to his credit since the establishment of his previous benefit year before a further benefit year can be set up; the jurisdiction of the Umpire is limited to the interpretation of the Act.

The material facts of the case are as follows:

The claimant, a painter, made a claim for benefit on January 18, 1945, and served five of the nine waiting days required. He then became self-employed at his trade, and made a renewal claim for benefit on January 9, 1946. He served four waiting days and received benefit for four days, and his benefit year lapsed.

On January 18, 1946, he made another claim for benefit, and it was found that he had not sixty daily contributions to his credit since the commencement of the previous benefit year as required by the Act. His last claim was disallowed by the insurance officer, and this decision was confirmed by a court of referees.

The claimant appealed, with the permission of the chairman, to the Umpire.

#### **DECISION**

The appeal was dismissed.

"In this appeal there is no dispute as to facts or law. In substance it is one against the provisions of the Act and my jurisdiction is limited to interpreting the Act as it is.

"The Act provides that on application for benefit the claimant must show that since the commencement of his last benefit year contributions have been paid in respect of him for sixty days. The claimant was unable to show any contributions since the commencement of his last benefit year and consequently he simply could not meet the condition stated in the Act.

"The appeal is dismissed."

**Case No. CUB-71. (28 May, 1946)**

**Held:** That only the actual number of days on which non-insurable employment was engaged in can be used in calculating the number of days for which an extension of the two-year period may be granted.

The material facts of the case are as follows:

The claimant was employed for one hour a day, one day a week, taking out ashes from the basement of a building, during the period November 1, 1944 to May 19, 1945 (29 days). He made claim for benefit on September 19, 1945 and applied for extension of the two-year period, requesting that the whole of the period between these two dates be taken into consideration. The insurance officer disallowed the claim and refused to grant the extension. The court of referees allowed the extension for the whole of the period.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was sustained with this proviso, that the period of extension be reduced to the 29 days during which the claimant was employed.

"Where an extension of the two-year period is requested, it can be increased by only such actual periods of incapacity, employment or business engagement.

"In this instance the appellant was only employed during one day per week and not during the whole period in question. His total employment during this period only, should have been taken into consideration. In the period in question he was employed on 29 days and I rule that the period referred to shall be reduced to one of 29 days, the actual days in which the appellant was employed. With this proviso, that the period be reduced to the 29 days during which the appellant was employed, the appeal is sustained."

**Case No. CUB-72. (28 May, 1946)**

**Held:** That any period of incapacity must be within the two-year period which immediately precedes the date of a claim before it can be used for extension of the two-year period.

The material facts of the case are as follows:

The claimant, a former railwayman retired without pension, made claim for benefit three years later, which was disallowed by the insurance officer because he had no contributions to his credit during the two years preceding the date of his claim. His application for extension of the two-year period was not approved due to the fact that the period of incapacity was not within the preceding two years. The court of referees unanimously upheld this decision.

With the permission of the chairman, the claimant appealed to the Umpire.

**DECISION**

The appeal was dismissed.

"From the submissions made it is evident the appellant on retiring from the . . . Railway Company did so with the intention of with-

drawing from the labour market. It is incorrect to state—as a rule—that a person on being unemployed is immediately entitled to obtain financial benefit under the Unemployment Insurance Act. Before obtaining financial benefit, the claimant must satisfy the Commission that he has conformed to the requirements of the Act. He must be capable and available for employment, if and when such is offered.

"In this case, had the appellant called at the local office of the Unemployment Insurance Commission when he retired from his employment, there is no doubt that then employment could have been offered him.

"The provisions of the Act are or ought to be known and ignorance thereof can no longer be accepted as a valid reason for non-compliance. The unanimous decision given by the court of referees is upheld and the appeal is dismissed."

#### **Case No. CUB-73. (28 May, 1946)**

*Held:* That a minor has just cause for leaving his employment when such action is necessitated by his parents' demand that he live with them at their place of residence.

The material facts of the case are as follows:

The claimant, 17 years of age, worked as a press operator from June, 1945 to January, 1946, when he left voluntarily and accompanied his parents who moved to a distant town. On making a claim for benefit he was disqualified for a period of six weeks for having left voluntarily without just cause. He appealed to a court of referees on the grounds that his parents required him to live with them, and the work which he had been doing bothered his eyes. A majority of the court, before which the mother appeared and corroborated the son's statements, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"In my opinion the question to be considered in this case is not whether the appellant was running any danger or risk in remaining in his employment but whether under the law of Ontario he could legally have refused to obey his parents. According to the laws of that province, he is still a minor and, therefore, under their direct charge.

"However, if at a later period the youth is offered other suitable employment and he wishes to remain at home with his parents, the question will have to be considered as to whether he has not placed himself outside the labour market and thereby has become 'not available' for employment. Under the circumstances the appeal is allowed."

#### **Case No. CUB-74. (28 May, 1946)**

*Held:* That it is the duty of an employee to exhaust every reasonable means of having a grievance remedied before leaving his employment.

The material facts of the case are as follows:

The claimant was employed as manager of a skating arena, and was under the direct supervision of a secretary who acted for the board

of directors of the owner company. He left this employment voluntarily, claiming that he was unable to carry on because of the attitude and the lack of co-operation of the secretary. On making a claim for benefit, the insurance officer disqualified him for a period of six weeks because he left voluntarily without making any effort to have his grievances rectified by his employer, the board of directors. A court of referees, by a majority, upheld this decision.

The claimant appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"I concur in the opinion of the majority of the court of referees whereby it is the duty of an employee to exhaust every reasonable means of having a grievance remedied before leaving their employment. In this case there is nothing to show that the appellant appealed to the board of directors to see if any amicable adjusting of existing difficulties could be made.

"Under the circumstances, there is no reason to interfere with the decision of the court of referees, and the appeal is dismissed."

#### Case No. CUB-75. (28 May, 1946)

**Held:** That refusal of a referral to suitable employment which was made prior to the filing of a claim is a proper basis for disqualifying the claimant who files a claim within six weeks of the refusal.

The material facts of the case are as follows:

Two days before filing a claim for benefit the claimant refused to accept a situation in suitable employment. The insurance officer disqualified her for a period of six weeks, and the court of referees unanimously set aside this decision on the ground that the claimant could not be deemed to have refused an offer of suitable employment made prior to her claim for benefit.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The court of referees, in its unanimous decision, stated:

"It is, therefore, obvious that on the 5th of January, the claimant was not under any obligation to apply for the position notified to her. No such obligation arose until after she applied for benefits."

"This decision implies that there is no obligation to apply for or accept employment before applying for benefit.

"Section 43 (b) of the Act states:—

"An insured person shall be disqualified for receiving benefit—If on a claim for benefit it is proved by an officer of the Commission that the claimant—after a situation in any employment

which is suitable in his case has been notified to him by an employment office . . . has without good cause . . . refused to accept such situation . . .

"has neglected to avail himself of an opportunity of suitable employment, or

"has without good cause refused or failed to carry out any written direction given to him by an officer of the employment office with a view to assisting him to find suitable employment (being directions which were reasonable having regard both to the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district in which the claimant resides)."

"The instructions of an employment office should be carried out even before a claim for benefit has been made. In this case it has been proved that the appellant was notified of a position two days before making a claim for benefit and has without good cause refused to accept such situation.

"To receive financial benefit, a claimant must follow the provisions of the Act.

"The employment offered to the appellant on the 5th of January was suitable and should have been accepted. I therefore allow the appeal."

#### **Case No. CUB-76. (28 May, 1946)**

**Held:** That intermittent absenteeism without notifying the employer of the reason therefor is misconduct.

The material facts of the case are as follows:

The claimant lost his employment as a janitor because of chronic absenteeism. He had been employed for four months and the employer's records showed that he was absent one day in July, eight days in August, two in September, and eight in October. On making claim for benefit on October 30, 1945, he claimed to have been ill during his August and October absences, although he did not produce medical certificates, and that he had been unable to notify his employer due to the fact that he lived with a family which had no telephone. The insurance officer disqualified him for a period of six weeks on the ground that he had lost his employment by reason of his own misconduct, and a court of referees upheld this decision.

The chairman granted the claimant leave to appeal to the Umpire.

#### **DECISION**

The appeal was dismissed.

"In his written submission to the court of referees the appellant claims that his absence was due to sickness although no medical certificate was submitted.

"The appellant further claims that he was able to cure himself of his illness as he knew what remedies to take. The court of referees gave a unanimous decision against the appellant and it is from this decision that an appeal is being made to the Umpire.

"From the submissions before me I can see no valid reasons for changing the unanimous decision given by the court of referees and, therefore, must dismiss the appeal."

### **Case No. CUB-78. (28 May, 1946)**

**Held:** That a claimant who, for domestic reasons, voluntarily leaves full-time employment and subsequently is willing to accept only part-time employment, is not available for work.

The material facts of the case are as follows:

The claimant, a married woman with one child, had been employed as head waitress for 14 months when she voluntarily left her employment on November 30, 1945. On January 21, 1946, she made claim for benefit and one month later refused to accept work as a waitress at 45 cents a week less than she had formerly earned, stating that she was unable to accept full-time employment because of domestic responsibilities consequent upon the return of her husband from overseas. The court of referees unanimously confirmed the disqualification of six weeks imposed by the insurance officer, on the ground that she was not available for work within the meaning of the Act.

The chairman granted the claimant leave to appeal to the Umpire.

### **DECISION**

The appeal was dismissed.

"The appellant states that she was not previously employed as a waitress but as a head waitress and is prepared to take employment in that capacity, if the hours conform to her domestic obligations.

"The appellant's domestic responsibilities and availability for employment changed considerably when her husband returned from overseas. Until that time she was available for employment, but immediately on his return she resigned her position. It is evident that it was for this reason that she voluntarily left her former employment.

"The unanimous decision of the court of referees should not be interfered with."

### **Case No. CUB-79. (28 May, 1946)**

**Held:** That a claimant is not available for work when she has been unemployed for sixteen weeks and alleges that she has lost the means of transportation formerly available to and from the nearest place of possible employment where she had previously been employed.

The material facts of the case are as follows:

The claimant, a married woman, separated but living with her two children, lost her employment as a fitter in a city located 10 miles from her home, and made claim for benefit, which was allowed. After having been unemployed for five months, she refused to apply for a situation which was considered suitable, stating that she had to depend on bus service for transportation and that the first bus did not reach the city until 8.30 in the morning, whereas the commencing hour of work was 7.00 o'clock. She had formerly travelled by automobile with

her husband but this means of transportation was no longer available to her. The insurance officer disqualified her for a period of six weeks on the ground that she was not available for work and this decision was upheld by a majority decision of the court of referees.

The claimant appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"The appellant has already drawn benefits for a period of 96 days or 16 weeks and the point at issue is whether the appellant was justified in refusing employment because she resided at a distance of ten miles from B. . . . No submissions have been made to show that any effort has been made by the appellant to secure transportation so as to be available for employment.

"From the evidence and submissions before me the appellant appears to have made no reasonable effort to obtain necessary transportation to work in B. . . . , where she formerly was employed and the nearest place where employment was available. She was requested to appear before the court of referees and neglected to avail herself of this opportunity. Under the circumstances I come to the conclusion that appellant was not available for employment and the appeal therefore is dismissed."

#### Case No. CUB-81. (28 May, 1946)

*Held:* That the findings of a court of referees which are based on oral and documentary evidence are acceptable to the Umpire when the conclusions of the court are not unreasonable.

The material facts of the case are as follows:

The claimant, the day after she commenced work for the American Army in Canada, was inoculated with certain vaccines in accordance with United States Army Regulations. As a result of these inoculations, she claimed that she became ill and had to remain at home. She resigned her position because she thought it would be unfair to her employer to be away from her work, and made claim for benefit. The insurance officer disqualified her for a period of six weeks on the ground that she had voluntarily left her employment without just cause. The court of referees allowed the claim by a majority decision, the chairman dissenting, his opinion being that the claimant should have allowed her employers to decide whether, in view of her sickness, they were prepared to hold the position open for her.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"The question submitted is whether the appellant had just cause for separation from her employment and in this case the problem is purely factual. The appellant appeared in person before the court of referees and the majority found that she had acted in good faith.

Therefore, there seems to be no good reason to disturb the decision of the court of referees.

"The appeal is dismissed."

### Case No. CUB-82. (28 May, 1946)

**Held:** That it is the responsibility of the insured person to make his claim for benefit and that no antedating is warranted when a claimant was advised of his rights but made no claim for benefit until two months later.

The material facts of the case are as follows:

The claimant registered for employment on December 28, 1945, four days after separating from his employment, and on March 1, 1946, made claim for benefit and requested that it be antedated to the day on which he registered for employment. He alleged that on that day he had received no instructions to return to the local office on any fixed date and that it was not until he reported again on March 1 that he had been handed a pamphlet entitled "Information for Claimant". The insurance officer allowed the claim from the date on which it was made but did not approve the application for antedating. The court of referees, by a majority decision, approved of the antedating.

The insurance officer appealed to the Umpire.

### DECISION

The appeal was allowed.

"From the submissions before me it appears that the appellant called at the local employment office on the 15th day of December and received information as well as instructions to follow if and when he became unemployed and claimed benefit. The appellant's signature appears on the form UIC 701 which tends to confirm this statement. The evidence discloses that the appellant waited from December 28, 1945, to March 1, 1946, before making enquiries at the local office as to why no benefits had been paid.

"A period of over two months appears to me to be too long in which any claimant for benefit should wait before finding out the reason for a delay in same.

"The appellant was within easy access of the local office where he could easily have phoned or called in person to find out the reason for any delay that may have been occasioned and in an appeal of this character there must be some onus of responsibility upon an insured person to ascertain causes for delay.

"The Unemployment Insurance Act has now been in force for several years and its provisions in so far as 'claim for benefit' is concerned are fairly well known and every reasonable effort has been made to acquaint insured persons with their rights and duties.

"In considering all circumstances of the case, it appears to me that the claimant has not shown 'good cause' for his delay in requesting that his claim be antedated for the period from December 28, 1945, to March 1, 1946.

"Therefore I must uphold the appeal of the insurance officer."

### Case No. CUB-85. (29 May, 1946)

**Held:** That a claimant who has lost employment because of a stoppage of work due to a labour dispute must personally prove his right to relief from the disqualification which is provided for in the Act. The fact that insured persons belong to another union or to no union does not *ipso facto* make them parties without an interest in the labour dispute.

The material facts of the case are as follows:

The claimant was employed by an automobile manufacturer and on making claim for benefit was disqualified on the ground that he had lost his employment because of a stoppage of work due to a labour dispute, the disqualification to last for so long as the stoppage of work continued. In his appeal the claimant stated, *inter alia*, that he was not a union member, that he was kept out of work by pickets, and that he was not participating in, financing, or directly interested in the dispute. A court of referees dismissed his appeal, and he was given leave to appeal to the Umpire, when he claimed that there was no worker of his classification participating in the labour dispute, and asked relief from disqualification.

### DECISION

The appeal was dismissed.

"Under Section 43 of the Unemployment Insurance Act dealing with disqualifications for benefit and relief from these disqualifications, there are certain obligations upon the insured person.

"For instance, where a stoppage of work has occurred, due to a labour dispute, and benefits are claimed, the onus rests with the insured person, to show that he is not participating in or financing or directly interested in the dispute.

"The Canadian Act in this respect follows identically the British Act, and it has been laid down by the highest authorities there, as follows:

"The first demand is consideration where the claimant as an individual, is (1) participating in, or (2) financing, or (3) directly interested in the dispute, and secondly, whether he belongs to a "grade or class" of which any member employed at the premises at the time the stoppage commenced is concerned in the dispute in any one of these three senses. Before relief from disqualification can be afforded there are thus six conditions to be satisfied. A claimant must satisfy all of them."

"Claimants must not rely on the statutory authorities ascertaining whether or not they are entitled to relief from disqualification. The burden of proof is on the claimant; and the claimant must prove that he does not belong to a grade or class of workers participating, etc., in the dispute, and is not individually concerned in it."

"Directly interested—It may be ordinarily presumed that if the issue of the dispute which causes the stoppage would directly affect the claimant's hours of work or wages, he is "directly interested" in the dispute, even though he stands to lose, and not to gain, if the employees engaged in the dispute bring it to a successful issue."

"It is also of interest to note the remarks of Mr. Justice Rand, who investigated the dispute, and reported on January 29, 1946. From page five I take the following quotation, which has a direct bearing on this case:

"The employees as a whole become the beneficiaries of union action, and I doubt if any circumstance provokes more resentment in a plant than this sharing of the fruits of unionist work, and courage, by the non-member. It is irrelevant to try to measure benefits in a particular case; the protection of organized labour is premised as a necessary security to the body of employees. But the Company in this case admits that substantial benefits for the employees have been obtained by the union, some in negotiation, and some over the opposition of the Company.'

"Further, on page six of the report Mr. Justice Rand states:

"It is, in my opinion, essential to the larger concern of the industry that there be mass treatment in the relation of employees to that organization that is necessary to the primary protection of their interests.

"I consider it entirely equitable then that all employees should be required to shoulder their portion of the burden of expense for administering the law of their employment, the union contract; that they must take the burden along with the benefit.'

"In the submissions in this case there is a letter on file from the [employer] under date of February 7, 1946, which states that:

"[The claimant] is employed by the ..... Company as a factory clerk in ..... Department 31, which classification is included in the unit covered by the collective bargaining agreement between this Company and Local ..... (union)."

"I do not think that under these circumstances there can be any disputing of the fact that the appellant was an interested party to the dispute and was directly interested in its outcome.

"In view of these conclusions, it is not necessary for me to go into the question of whether the appellant belonged to a grade or class of workers participating in the dispute.

"In order that an insured person shall be entitled to receive benefits, it is necessary for him to prove the points already referred to, and in this case the appellant has given no proof that entitled him to relief from the disqualifications.

"The fact that an insured person belongs to another union or to no union at all does not 'ipso facto' make them parties without an interest in a labour dispute. In this particular instance there can be no doubt of the 'interest' the appellant had in the dispute.

"The unanimous decision of the court of referees is maintained, and the appeal is dismissed."

#### **Case No. CUB-86. (29 May, 1946)**

**Held:** That the fact that an insured person belongs to another union or to no union does not make him a party without interest in the outcome of the labour dispute. That it may be presumed that if the issue involved in the labour dispute which caused the work stoppage would directly affect the hours of work

or wages of the claimant, he is directly interested in the dispute even if he stands to lose and not to gain by the outcome. (Rand report dealt with in this decision.)

The material facts of the case are as follows:

The claimant was employed by an automobile manufacturer. On making claim for benefit, he was disqualified on the ground that he had lost his employment because of a stoppage of work due to a labour dispute, the disqualification to last for so long as the stoppage of work continued. He appealed to a court of referees, stating that he was "locked out" from his work because of a labour dispute between the employer and a union of which he was not a member. The court of referees found that he was a member of a grade or class of workers of which, before the commencement of the stoppage, there was one who was directly interested in the dispute.

The claimant's union appealed on the ground that he was not connected with the striking union, and should not be penalized for the action of the latter.

## DECISION

The appeal was dismissed.

"Under Section 43 of the Unemployment Insurance Act dealing with disqualifications for benefit and relief from these disqualifications, there are certain onuses and responsibilities upon the insured person.

"For instance, where a stoppage of work has occurred, due to a labour dispute, and benefits are claimed, the onus of responsibility rests mainly with the insured person, to show that he is not participating in or financing or directly interested in the dispute.

"The Canadian Act in this respect follows identically the British Act, and it has been laid down by the highest authorities there, as follows:

" "The first demand is consideration whether the claimant, as an individual, is (1) participating in, or (2) financing, or (3) directly interested in the dispute, and secondly, whether he belongs to a 'grade or class' of which any member employed at the premises at the time the stoppage commenced is concerned in the dispute in any one of these three senses. Before relief from disqualification can be afforded there are thus six conditions to be satisfied. A claimant must satisfy all of them."

'Claimants must not rely on the statutory authorities ascertaining whether or not they are entitled to relief from disqualification. The burden of proof is on the claimant; and the claimant must prove that he does not belong to a grade or class of workers participating, etc., in the dispute, and is not individually concerned in it.'

'Directly interested—It may be ordinarily presumed that if the issue of the dispute which causes the stoppage would directly affect the claimant's hours of work or wages, he is 'directly interested' in the dispute, even though he stands to lose, and not to gain, if the employees engaged in the dispute bring it to a successful issue.'

"It is also of interest to note the remarks of Mr. Justice Rand, who made investigation of the dispute, and reported on January 29,

1946. From page five I take the following quotation, which has a direct bearing in this case:

"The employees as a whole become the beneficiaries of union action, and I doubt if any circumstance provokes more resentment in a plant than this sharing of the fruits of unionist work, and courage, by the non-member. It is irrelevant to try to measure benefits in a particular case; the protection of organized labour is premised as a necessary security to the body of employees. But the Company in this case admits that substantial benefits for the employees have been obtained by the union, some in negotiation, and some over the opposition of the Company."

"Further, on page six of the report:

"It is, in my opinion, essential to the larger concern of the industry that there be mass treatment in the relation of employees to that organization that is necessary to the primary protection of their interests.

'I consider it entirely equitable then that all employees should be required to shoulder their portion of the burden of expense for administering the law for their employment, the union contract; that they must take the burden along with the benefit.'

"Due to the actions of Local ..... (union), the [plant] at ..... was completely closed down, and as far as the submissions indicate there were no objections of any kind submitted to the Company or to the Unemployment Insurance Commission to show that the appellant was not willing to accept the conditions prevailing at the time and accept the benefits that might accrue from the result of a stoppage of work at the plant.

"I don't think that, under the circumstances, there can be any disputing of the fact that the appellant was an interested party to the dispute and was directly interested in its outcome.

"In view of these conclusions, it is not necessary for me to go into the question of whether the appellant belonged to a grade or class of workers participating in the dispute.

"In order that an insured person shall be entitled to receive benefits, it is necessary for him to prove the points already referred to, and in this case the appellant has given no proof that entitles him to relief from the disqualifications.

"The fact that an insured person belongs to another union or to no union at all does not 'ipso facto' make them parties without an interest in a labour dispute. In this particular instance there can be no doubt of the 'interest' the appellant had in the dispute.

"Under the circumstances, the unanimous decision of the court of referees is maintained and the appeal is dismissed."

#### **Case No. CUB-87. (29 May, 1946)**

**Held:** That a claimant who has received notice of separation, and who lost his employment by reason of a work stoppage caused by a labour dispute which occurred prior to his expected date of separation, is subject to disqualification for so long as the work stoppage continues.

The material facts of the case are as follows:

The claimant worked for an automobile manufacturer until September 12, 1945, when he lost his employment by reason of a work

stoppage due to a labour dispute. He was disqualified and on appeal to a court of referees established the fact that he was due to be laid off on September 14, 1945. The court dismissed the appeal.

The claimant appealed to the Umpire, with permission, stating that he had obtained his release from his employer on October 25 in the hope of obtaining other work.

## DECISION

The appeal was dismissed.

"The appellant was an auto manufacturing machine operator whose working conditions were covered by agreement between the Company and the Union. He was also a member of a grade or class of workers which immediately before the commencement of the stoppage were employed by the .....

"Under the circumstances there can be no doubt that the appellant was an interested party to the dispute and was directly interested in its outcome. The fact that an insured person does not belong to a Union does not 'ipso facto' make them parties without an interest in a labour dispute.

"The letter submitted by the appellant indicating that he was on a list of men to be laid off on the 14th has no definite bearing upon the case, as at the time the separation from employment took place it was as a result of a stoppage of work due to a labour dispute.

"Therefore, I concur in the unanimous decision of the court of referees and dismiss the appeal."

[See detailed decisions CUB-85 and CUB-86.]

## Case No. CUB-89. (29 May, 1946)

**Held:** That employment is not suitable if the rate of pay which is offered is less than that which is customarily paid by good employers or by agreement between employers and employees in the district.

The material facts of the case are as follows:

The claimant was a married woman who had been employed for three years as a factory worker in a wartime job which paid 54 cents an hour and, when the work was completed, she made claim for benefit on October 30, 1945, which was allowed. Three and a half months later she was notified of factory work at a wage of 25 cents an hour during the training period, after which she would be paid on a piece work basis, and it was expected that she could earn approximately \$16 for a forty-hour week. She claimed that the wages were too low and refused to apply for the situation. The insurance officer disqualified her for a period of six weeks on the ground that she had refused to apply for a situation in suitable employment, and a court of referees, by a majority decision, upheld this decision.

The claimant appealed to the Umpire.

## DECISION

The appeal was allowed.

"From this decision the claimant has appealed to me on the grounds that the wages offered, namely 25 cents per hour, is not the wage recog-

nized by good employers and further the wages paid by this Company are not wages paid by agreement between employees and employers.

"According to the evidence and the submissions made, it would appear that the Company have recognized in some respects the validity of this claim by making a request to the War Labour Board for permission to increase the commencing pay from 25 cents to 29 cents per hour for the first six months. Also it is stated in the evidence that 25 cents per hour is one of the lowest known starting rates in B ..... industry.

"In view of these facts there seems to be justification on behalf of the appellant in refusing to accept employment at the rate of pay that was offered to her, same being less than that which was customarily paid by good employers or by agreement between employers and employees in the district. Therefore the appeal is allowed."

### **Case No. CUB-90. (29 May, 1946)**

**Held:** That a claimant has not just cause for voluntarily leaving his employment merely because another employee who does somewhat similar work is receiving a higher rate of pay.

The material facts of the case are as follows:

The claimant, a light labourer in a silk mill, had received three increases in pay during the seven months of his employment but felt that he should receive the same wage as another employee who worked near him. He requested an increase in pay, which was not granted by the employer who explained to the claimant that the other employee was in charge of changing machines and directly responsible to the department foreman and that the claimant was employed as his helper. He left voluntarily and stated, when making claim for benefit, that he was dissatisfied with his wages. He was disqualified by the insurance officer for a period of six weeks, on the ground that he had voluntarily left his employment without just cause. The court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the submissions made it appears that the rate of pay received by the appellant at the time he voluntarily left his employment was the accepted rate of pay in that district for the type of work he was performing. Also it is further indicated in the submissions made, that a few days after the appellant voluntarily left his employment he returned to the company and requested that he be allowed to return to his former job, which in the meantime had already been filled by another person and therefore he was unable to return to same. This in itself appears to be an admission of the mistake the appellant made in leaving his employment.

"In my opinion it is not a sufficiently valid reason for a person to leave his employment merely because another person doing somewhat similar work is receiving a higher rate of pay. In this case it is obvious

that the higher rate was being paid because of the additional responsibilities and duties that the other workman had to perform, and further that so long as the appellant was receiving the accepted rate of pay for the type of work he was performing there cannot be good cause for him to leave his employment.

"Therefore, in my opinion having left his employment without 'just cause' I have no alternative but to uphold the appeal made by the insurance officer. Appeal allowed."

### **Case No. CUB-91. (29 May, 1946)**

**Held:** That attendance at the local office in the hope of obtaining employment, but without registering for employment or making claim for benefit, is not sufficient ground upon which to base a valid claim for an extension of the two-year period which would be required in order to fulfil the first statutory condition.

The material facts of the case are as follows:

The claimant, aged 71 years, made claim for benefit, which was disallowed on the ground of insufficient contributions. He then applied for extension of the two-year period, contending that during the period October 16, 1943 to June 1, 1945 he had reported different times at the employment office but was told that there was no work for him, and that he did not register for employment as he understood it was not necessary because of his age. The insurance officer did not grant the extension and the court of referees upheld this decision but recommended that the Act be amended in order that the extension might be granted under such circumstances, and that this claimant be paid benefits accruing to him.

With the permission of the chairman, the claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"It will be observed from the decision that the court of referees uphold the action of the insurance officer in disallowing benefit to the claimant because of non-fulfilment of the first statutory condition.

"In the last paragraph of the decision the court of referees also recommend that benefits be paid to the claimant.

"The claimant appeals to me from the decision of the court of referees basing his appeal on the last paragraph of their decision and in the appeal implying that I have the authority to grant payment of benefits to him.

"I have every sympathy for the appellant.

"However, I am bound to point out that all parties to the Act, be they insurance officer, court of referees, or the Umpire are bound by its provisions and cannot do anything that is contrary to the provisions of the Act.

"In this particular instance the appellant had not the necessary 180 days' contributions to his credit in the two years previous to making claim for benefit and his request for extending his period has no valid grounds and would be contrary to Section 29(2) of the Act, as during the period in question he was unemployed and not engaged in any

excepted employment. There is no authority vested in anyone to override this section of the Act.

"Such changes would require amendments to the Act.

"Under the circumstances benefit cannot be paid to the claimant unless he complies with this provision and I regret that I have no alternative but to dismiss the appeal."

### **Case No. CUB-93. (29 May, 1946)**

**Held:** (1) That a distance of four miles and about one-half hour's travelling time to a place of employment is not unreasonable and is not a valid reason for the refusal of employment. (2) That night work as a janitress at the prevailing rate of pay is suitable employment for one who registered as a janitress and restricted herself to night work.

The material facts of the case are as follows:

The claimant was last employed as a labourer at 56 cents an hour and, on making claim for benefit immediately after separation, registered for night work as a janitress. Her claim was allowed and six months later she refused to apply for a position as a janitress in a theatre at a wage of \$15.94 a week, her reason being that the wages were not high enough. The insurance officer disqualified her for a period of six weeks on the ground that she had, without good cause, refused to apply for a situation in suitable employment and a court of referees, by a majority decision, reversed the decision of the insurance officer on the ground that the wages were not sufficient and that the distance between the place of employment and the claimant's home rendered the work unsuitable for her.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"In the submissions and facts I have before me, it would appear that the distance from the appellant's home to the ..... Theatre was approximately four miles and by the usual means of transportation at present available, it takes about one half hour from her home to the place where the employment was available.

"It is my opinion that a distance of four miles and about one half hour's travelling time to a place of employment is not unreasonable and not unusual, therefore, I cannot accept this as a valid reason for refusal of the employment offered.

"The second point raised is that of the type of work and the wages offered. The appellant in registering for employment had described herself as a janitress and also requested that on account of her domestic responsibilities that she could only accept employment on night shifts. This work was at night and of a kind she was capable of performing.

"The further question then to be considered is the wages offered. It is generally admitted that \$15.94 per week was the prevailing rate for this class of labour and those generally observed in the district, in which respect it is in accord with the proviso to Section 31 of the Unemployment Insurance Act which reads as follows:

"Provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances

of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"If the wages for the employment offered are the prevailing rate or those recognized in the district by employers and employees or by good employers, then the employment is suitable employment.

"In this case it is generally agreed that the wages were those at the prevailing rate and those recognized in the district.

"Under the circumstances I feel that the insurance officer is justified in making the appeal and the appeal is allowed."

#### **Case No. CUB-95. (27 June, 1946)**

**Held:** That a boy, 17 years old, should not be forced to leave his home if there is any hope of his procuring employment in his home town, and that he had good cause for refusing to apply for employment with a prospective employer from an outside point.

The material facts of the case are as follows:

The claimant, single, aged 17 years, was last employed on a tobacco farm for a month ending September 12, 1945, and made claim for benefit on January 14, 1946. On January 7 he was notified to report to the local office for an interview with the representative of an iron works which was located in another city. The claimant failed to report and was disqualified for a period of six weeks for having refused, without good cause, to apply for a situation in suitable employment. On appeal to a court of referees, which allowed the appeal, the claimant stated that he expected to get work in his home city, and that his parents objected to his leaving home.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The court of referees' decision evidently was based on the fact that a lad of this age should not be forced to leave his home if there was any hope at all of his procuring employment in his home town, and upon this ground the court presumably found that the work was unsuitable or that the claimant had established good cause for refusing it.

"Under the circumstances I consider [the claimant] had 'good cause' in refusing to accept the offer of employment which entailed his living away from home and the appeal of the insurance officer is dismissed."

#### **Case No. CUB-96. (27 June, 1946)**

**Held:** That a student who had a history of part-time insurable employment, in which he was engaged after school hours, in the evenings and on weekends, and covering a prolonged period, is available for work, under the same conditions.

The material facts of the case are as follows:

When making claim for benefit on December 13, 1945, the claimant, a student, stated that he had been employed by various firms since 1940, working only part-time during the school year, that is, after four o'clock on school days and all day Saturdays, and through the summer holidays on full-time, and that he had made contributions while so employed. His last employment, under these conditions, was from June to December 1945, when he was replaced by a veteran. The insurance officer held that the claimant was not available on Monday through Friday, and allowed benefit for Saturday of each week. The court of referees unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"In considering the circumstances of this case British precedents whilst of value cannot be a complete guide in determining the merits of the case as conditions in the two countries are not identical.

"Evidently there had been considerable uncertainty in regards to the status of students in Canada prior to 1944.

"In order to rectify or clarify the situation a Special Order was passed on July 4, 1944, by the Unemployment Insurance Commission in accordance with Part II of the First Schedule to the Unemployment Insurance Act and (p) of same dealing with Excepted Employment. It reads as follows:

"'Employment of any class which may be specified in a special order made by the Commission and declared by the Commission to apply for the purpose of this Act as being of such a nature that it is ordinarily adopted as a subsidiary employment only and not as the principal means of livelihood.'

"'Employment of a full-time enrolled student of a day school, college or university during any week, from Sunday to Saturday, in which his earnings from any one employer do not exceed \$5.40.'

"This special provision was enacted with the full knowledge of the circumstances surrounding the employment of students whose work during school periods are generally on a part-time basis and only after school hours. It is quite understandable that a student's availability for work would be restricted because of his necessary attendance at school. It is also clearly indicated in the submissions that the claimant has been able to obtain such employment after school hours that brought him within the insurable classes.

"The appeal of the insurance officer is therefore dismissed."

#### Case No. CUB-97. (27 June, 1946)

**Held:** That a claimant who is separated from employment and complies with the statutory conditions is entitled to benefit for statutory holidays which occur during any benefit period. (See also CUB-62.)

The material facts of the case are as follows:

The claimant, a labourer, in receipt of benefit since March 7, 1946, signed the unemployment register and declared himself to be unemployed

on each of the days for which he was claiming benefit, including Good Friday, April 19, 1946 (a statutory holiday). No payment of benefit was made for that day by the local office, which treated it as a holiday in accordance with Commission Minute under Section 33(c) of the Act. The insurance officer confirmed the ruling of the local office, on the ground that Good Friday was a statutory holiday and therefore an idle day rather than an unemployed day, it being general practice in industry to allow employees statutory holidays as idle days, with the exception of those persons whose employment is of such a nature that it would be necessary for them to continue their work because of some exceptional condition or circumstance.

The claimant appealed to the court of referees, alleging that he had worked on Good Friday, 1945, and had paid a contribution for that day. The court of referees reversed the decision of the insurance officer being of the opinion that any person whose employment has been terminated is wholly and completely unemployed during the period following the termination of employment until new employment is obtained, regardless of whether any of the days falling within such period of employment is a holiday or not.

The insurance officer appealed to the Umpire, on the ground that the court had misinterpreted or did not properly consider the true intent and purpose of Section 28(ii) of the Act.

## DECISION

The appeal was dismissed.

"It is submitted by the insurance officer that 'statutory holidays' are in fact 'idle days', and not being days of usual employment for the people of Canada the said days should be ignored and non-compensable whether occurring during a period of employment (Sec 33 (c)) or when the claimant has no current employer. Statutory holidays being idle days (those on which no work is being done) may be considered as potentially idle days (days on which no work would be done or available), when unemployed, and as such should be non-compensable.

"Reference is made to Section 33 (c) of the Act in which I have already given a decision in the case of ..... CU.-B. 62. In that decision I stated:

"It is my opinion that Paragraph (c) of Section 33 of the Act must be interpreted as applying only to claimants who are actually employed but who are laid off for a day or more and who claim benefit for a holiday.'

"In the present case the claimant is completely separated from his employment and is not affected by any holiday which occurred at the factory where he was last employed. The question involved is whether all statutory holidays should be treated as non-compensable days.

"It appears from the submissions of the insurance officer that the claimant should be deemed to be not unemployed even though he signs the proper declarations saying that he was unemployed on that day and may also be available for employment if same were offered to him. In this case the claimant has shown in the submissions that he was actually employed on Good Friday of the previous year indicating that he was

available on that particular day. He might have been available again on the day on which the insurance officer claims he was not available because of it being a statutory holiday and therefore regarded as an idle day.

"The term 'idle day' is a new definition which is not to be found anywhere within the provisions of the Unemployment Insurance Act and therefore it would be beyond my jurisdiction and against the provisions of the Act if I had to declare statutory holidays as idle days, and therefore non-compensable.

"In my opinion Section 28 (ii) is not ambiguous. If an insured person proves in the prescribed manner that he is unemployed and that he is entitled to benefit, and if a statutory holiday comes within such period of unemployment, it would appear to me he is entitled to benefit on such day so long as he is available to accept suitable employment if such be offered to him.

"Section 28 (ii) must also be considered in relation to Sections 35 and 36 of the Act. Section 35 states:

"An insured person who is unemployed for six full days in any calendar week or for the full number of days constituting the normal week at the plant, factory, workshop or other place of usual employment, shall receive benefit subject to the provisions of section thirty-six at the weekly rates prescribed in the Third Schedule to this Act, and for any calendar week during a portion of which he is unemployed, he shall receive benefit for his benefit days in that week at the daily rates prescribed in that Schedule.'

It would appear to me in considering this Section that it is intended to give to a person in receipt of benefit payment for six full days in any calendar week as there is no reference made to any deductions for any statutory or other holidays.

"Section 36 of the Act specifically states the days on which an insured person shall not be entitled to receive benefits and reads as follows:

"'(a) for the first nine days of unemployment which occur in any benefit year, nor

"'(b) for the first day of unemployment in any calendar week,

(i) unless the insured person is unemployed for the whole of that week, or

(ii) unless the first day of unemployment in that week immediately follows a period of continuous unemployment of not less than one full week;

and any day of unemployment excluded under the provisions of this paragraph shall be in addition to the days, if any, excluded under paragraph (a) of this section.'

"In this section the days on which an insured person is not entitled to receive benefit is clearly indicated and again no reference is made to statutory holidays.

"Had it been the intent of the Act not to regard statutory holidays as days of unemployment or as days where compensation should not be paid to one in receipt of benefit, then reference would have been made to same in one of the two Sections of the Act to which I have referred.

"Taking all factors into consideration I cannot help but come to the conclusion from the wording of the Act that it was not intended nor does its wording infer that an insured person be debarred from receiving payment for statutory holidays assuming the man is unemployed on that day and that he conforms in other respects to the provisions of the Act.

"Under the circumstances I dismiss the appeal of the insurance officer."

#### **Case No. CUB-98. (27 June, 1946)**

**Held:** That work away from home, at wages prevailing in the district where housing accommodation was available, was suitable employment for a person who had been unemployed for four months.

The material facts of the case are as follows:

The claimant, a single girl, registered for work as a factory worker, was last employed by a defence industry at A..... for three and one half years, at a wage of 57 cents an hour, transportation having been furnished between her place of employment and her home at U..... Four months after separation from this employment, she was referred to factory work in a town situated approximately twenty-five miles from her home at a wage of 36 cents an hour for a 50-hour week; on a piece work basis, the weekly wage would average between \$20 and \$25. Board and room was available at \$8 a week. She refused to apply for this situation, claiming that the wages were too low, also that no transportation was available and that she had to be home nights due to domestic responsibility because of her mother's ill health. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment. On appealing to the court of referees, she produced a medical certificate concerning her mother's ill health and the court of referees reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The question to consider is whether the claimant has without good cause refused an offer of suitable employment within the meaning of the Act.

"The claimant is 28 years of age and single, and in the district in which she resides there is evidently very little prospect of her finding employment of a type that could be regarded as suitable. She has already been unemployed for approximately four months and it is evident from the submissions made that if the claimant intended to re-establish herself in the labour market that she would have to obtain employment outside her own immediate district. The work offered to her was of a type that she was capable of performing and at wages that were the accepted rate for the district. The claimant has refused to accept work outside of her own district and undoubtedly is restricting her availability. If her domestic obligations are of such a nature as claimed then it might be considered that she was not available to accept suitable employment when offered.

"I consider that where a person has been unemployed for a period of approximately four months and is requested to accept employment away from home at wages prevailing in the district and where housing accommodation is available, then such employment must be regarded as suitable within the meaning of the Act.

"Under the circumstances the appeal of the insurance officer is allowed and the claimant ..... is disqualified for receiving benefit for a period of six weeks from the date on which this decision is communicated to the claimant."

### **Case No. CUB-99. (27 June, 1946)**

**Held:** That ignorance or misunderstanding of the Act does not constitute good cause for delay in making a claim for benefit.

The material facts of the case are as follows:

Three claimants were intermittently employed by an engineering company between October 25 and November 13, 1945. They did not make claim for benefit at the times various lay-offs occurred because of a misunderstanding in reference to the regulations of the Unemployment Insurance Act regarding the making of claims for benefit. Subsequently they requested that their claims be antedated to include the days on which they were unemployed between October 25 and November 13, 1945. The requests for antedating were not approved by the insurance officer and this decision was unanimously upheld by the court of referees.

The union of which the claimants were members appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"I have carefully gone into the submissions and the evidence given before the court of referees, and it appears that the main ground on which the appellants appeal is in reality their own lack of knowledge of the provisions of the Unemployment Insurance Act.

"A person partially or intermittently employed is in no way prevented from calling at the local offices of the Unemployment Insurance Commission and making application for benefit, even though he is not completely separated from his employment. It is pointed out by the appellant that at the time of these claims being made, there were in effect certain regulations in regard to National Selective Service. However, this was no barrier to the appellants from filing their claim at one of the local offices.

"As I have pointed out in many previous cases I cannot at this time accept as a reason for antedating, a plea that an insured person did not have a knowledge of the operations of the Unemployment Insurance Act. The Act has been in operation for five years and the duties and responsibilities of those coming under its provisions should be known by now.

"Under the circumstances I have no alternative but to uphold the unanimous decision of the court of referees and dismiss the appeal of the appellants."

**Case No. CUB-100. (27 June, 1946)**

**Held:** That a claimant who left her employment voluntarily because of her refusal to comply with a reasonable rule of her employer has voluntarily left her employment without just cause.

The material facts of the case are as follows:

The claimant was employed as a stenographer from March 21, 1946 to April 2, 1946 by a firm which made it a condition of employment (of which she was aware when she accepted the employment) that each employee have a medical examination by the company's own doctor at the plant, with no charge to the employee. She refused on two occasions to comply with this condition and the employer, being of the opinion that time would not change her attitude and that it would not be good for either the company or the employee for her to continue in their employ, gave her the opportunity to resign. The insurance officer disqualified her for a period of six weeks on the ground that she had voluntarily left her employment without just cause, and the court of referees unanimously upheld this decision.

With the permission of the chairman the claimant appealed to the Umpire.

**DECISION**

The appeal was dismissed.

"In this instance the claimant appeared in person before the court of referees who had the opportunity of examining the claimant and appreciating her demeanour at the time, and came to a unanimous decision in the matter. There is no dispute as to the facts in the case. The appellant was requested to comply with the rules of employment which is the custom for all new employees of the company. These rules are not unreasonable in any way and should have been complied with.

"I cannot see any reason for disturbing the unanimous decision of the court of referees. The appeal is, therefore, dismissed."

**Case No. CUB-101. (28 June, 1946)**

**Held:** That a taxi-driver who has lost his employment as a result of a conviction on a charge of dangerous driving while on duty, and whose licence was suspended for thirty days, was discharged for misconduct connected with his employment.

The material facts of the case are as follows:

The claimant, a taxi driver, was charged in police court with dangerous driving, was found guilty and fined \$35. His licence was suspended for 30 days, as a consequence of which he was discharged by his employer but was re-employed at the expiration of that period. He made claim for benefit, which was disallowed, and the insurance officer disqualified him for a period of six weeks on the ground that he was discharged from his employment by reason of his own misconduct. The court of referees unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The questions to decide is whether misconduct as shown in this case can be deemed to be misconduct within the meaning of the Act, and did the appellant lose his employment through his own misconduct.

"In this instance there is no doubt that misconduct has been proven, by the usual course of judicial procedure.

"It was during his working hours and whilst on duty that the claimant was guilty of two offences, driving at an excessive speed and driving past a stop signal at a street intersection.

"This offence or misconduct was during the course of, and in connection with this employment. Proven misconduct under these circumstances is in the same category as 'proven misconduct' against any insured person during the course of his employment as if he worked at some other occupation and his separation from employment was the result of his misconduct.

"On the other hand had the offence been committed outside of the hours of his normal employment the question would have to be considered from a different standpoint.

"Under the circumstances I must uphold the appeal made by the insurance officer and the disqualification imposed by him on the claimant for a period of six weeks is confirmed as from the day when this decision is communicated to the claimant."

## Case No. CUB-102. (6 July, 1946)

**Held:** That ignorance of the Act does not constitute good cause for antedating a claim for benefit. (Insurance book held by employer pending a recall of the employee.)

The material facts of the case are as follows:

The claimant, an elderly widow, filed a claim for benefit and at the same time requested that her claim be antedated back to a date three months previous, which was five days after she had been laid off from her employment. She stated that her insurance book had been retained by the employer for nearly two and one half months, that she had never seen it, and that she did not know and was not told that she could apply for benefit. The insurance officer allowed the claim from the date it was filed but did not allow the application for antedating. By unanimous decision the court of referees allowed the application for antedating and the insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"In none of her written evidence does the claimant allege that during any of the period over which she asked leave to have her claim antedated did she actually wish to apply for benefit. She merely states in effect that she did not understand the procedure and was not advised by anyone to apply for insurance.

"The facts of the case are not in dispute. She was separated from her employment on December 21, 1945 and expected to be called back

again by her former employers within a very short time. This is indicated in a letter on file from her employers dated April 12, 1946, being exhibit 4, which states:

"Owing to lack of work she was laid off at Christmas, but we did not send in her insurance book as we did not intend her to be off so long."

"The expected recall to her former employment did not materialize as soon as anticipated. She called at the office of the Unemployment Insurance Commission on March 27, 1946, and filed an initial claim for benefit. At the same time she also filed application to antedate claim to December 26, 1945.

"On the 2nd of April the employers notified the U.I.C. that the claimant had been re-employed. The claimant's insurance book was in the possession of the employer until March 4, 1946, on which date it was returned to the Unemployment Insurance Commission in .....

"It would appear from the decision of the court of referees that in this case they have accepted the plea that 'lack of acquaintance' with the Act is good cause for antedating. In several previous decisions I have already decided that lack of knowledge of understanding of the Act cannot be accepted as a valid reason for non-compliance. There may be occasions when antedating of claims may be inevitable due to circumstances, but in this instance the claimant lives close to the employment office and made no effort to find out what her rights and duties were.

"The reason for this is probably that she was expecting a call asking her to return to her former employment. When this did not materialize, she called at the insurance office, after an approximate delay of two months, and made claim for benefit, the same to be antedated.

"From the date of the claimant's separation until the date of her application for benefit, she had withdrawn herself from the labour market and was for such reason not available for other employment.

"The further fact alleged that she did not receive her insurance book from her employer cannot validly be urged against the Unemployment Insurance Commission, and cannot entitle the claimant to obtain benefit.

"In view of these special circumstances and of previous decisions in similar cases, the appeal of the insurance officer is allowed."

#### **Case No. CUB-104. (6 July, 1946)**

**Held:** That an insured person is not justified in voluntarily leaving suitable employment because of a reduction in the number of working hours, no reduction in the rate of pay having been made.

The material facts of the case are as follows:

The claimant was employed by a rug manufacturing company as a factory worker at a wage of 59 cents per hour from November 12, 1945, to January 30, 1946. On making claim for benefit he reported that he had left his employment because his wages were cut from \$27.84 to \$26.00, and that if he took time for lunch he lost pay for the time taken.

The employer stated that the reduction in pay was due to a work-week which had been shortened by two hours, and that the claimant's

demand for pay for the lunch hour would not be met as there was no provision for his working during the noon hour. He had left voluntarily. An application had been made to the War Labour Board to pay the same wages for the shorter work-week, but no increase could be granted until approval of the Board had been received.

The insurance officer disqualified the claimant for a period of six weeks for having voluntarily left his employment without just cause. A court of referees found that the claimant had a reasonable doubt that any reduction in pay was more than temporary (partly because of his imperfect knowledge of the English language), and allowed his appeal.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"It would appear that the claimant acted with undue haste in this matter in leaving his employment without attempting to fully ascertain the facts. It is quite apparent that the temporary reduction in pay was of such a nature that it could not be avoided until such time as the War Labour Board had given permission to the employer to allow the increase, which would compensate for the temporary reduction in pay. In fact there was no reduction in pay. What did take place was a reduction in working hours. Furthermore, any increase given would have been retroactive and therefore there would have been no loss.

"It also appears that all the other employees of the same company accepted the changed condition and there seems to be no good reason why the claimant should not have done the same in this instance.

"The statement that the claimant had an imperfect knowledge of English can hardly be accepted as a valid reason for non-compliance, as I find in one of the submissions a written statement by the claimant in his own handwriting which is perfectly legible and fairly well written.

"Under the circumstances, the appeal of the insurance officer is allowed and disqualification of six weeks imposed by the insurance officer is made effective as of the day on which this decision is communicated to the claimant."

## Case No. CUB-105. (6 July, 1946)

*Held:* That an unmarried man, unemployed for six weeks, had just cause for refusing to apply for suitable temporary employment away from home when it appeared that undue hardship would be caused his sick and aged relatives if he were required to leave home during the severe winter weather; he had worked in his last employment, in his home area, for fourteen years.

The material facts of the case are as follows:

The claimant, who is an unmarried man, aged 36 years, was employed at a steel works from November, 1931, until December 13, 1945, working as a machinist and receiving 85½ cents per hour. He lost his employment due to a shortage of work. On January 23, 1946, he was notified of employment as a machinist at the city of M....., about 145 miles from his home, at a wage of 95 cents per hour.

He refused to apply for this employment, stating that he was maintaining a home at N ..... for his widowed mother who was

quite old and semi-invalid, and that he could not maintain two homes. He was disqualified for a period of six weeks for refusing to apply for a situation in suitable employment, and appealed to a court of referees.

The court allowed the appeal, finding that the widowed mother, aged 85 years, needed special care and attention, that a brother was ill in bed and another brother, not long discharged from the army, planned to leave home shortly. A sister cared for the mother and sick brother.

The claimant had left his employment in B..... to come home to look after his mother and the home, and the court felt that he should not be expected to leave home in the middle of the winter in order to obtain employment. The situation was a temporary one and the claimant was later in a position to accept employment away from home.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"Had he left N..... to accept employment in another area undue hardship might have ensued. Although the claimant is single he had family responsibilities, which is borne out by the facts and submissions before me.

"The court of referees which went carefully into the facts of the case reached a unanimous decision in favour of the claimant. I see no good reason for disturbing the decision.

"Therefore the appeal of the insurance officer is dismissed."

#### Case No. CUB-106. (6 July, 1946)

**Held:** That lack of transportation does not furnish just cause for voluntary separation, and an insured person must arrange transportation to the nearest employment in order to be considered available for work.

The material facts of the case are as follows:

The claimant, a married woman, made claim for benefit and said that she had voluntarily left her employment because she had been deprived of her usual means of transportation to and from her work (two miles from her home) and was unable to find another person who could furnish it. Her claim was disallowed by the insurance officer and she was disqualified for a period of six weeks on the ground that she had voluntarily left her employment without just cause. Her appeal to the court of referees was allowed by unanimous decision.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The facts in this case are not in dispute. The claimant voluntarily left her employment because she claims she had no means of transportation to her work. Generally speaking, a distance of two miles cannot be said to be an unreasonable distance for persons to go to their places of employment.

"It is not an uncommon thing for people to go to work who live at a much greater distance from their employment than is the case in this particular instance.

"If insured persons live in an inaccessible area according to their own statements, and refuse employment because of this fact they are to all intents and purposes placing themselves outside the labour market, and therefore not available for employment when such is offered by the offices of the Unemployment Insurance Commission.

"In this particular instance the distance from the place of employment cannot be said to be great and if the claimant refused to accept such employment, then she has put herself in a position where she is not available to accept employment at the nearest place where such employment is available.

"Two similar cases came before me recently, CU.-B. 79, and CU.-B. 93, the same principle being involved.

"In both these instances I reached the same conclusion.

"The appeal of the insurance officer is allowed, and the disqualification imposed by him on the claimant for a period of six weeks is confirmed as from the day when this decision is communicated to the claimant."

### **Case No. CUB-107. (24 July, 1946)**

**Held:** That the desire of a girl, aged 22 years, to make her home with her parents who were moving to a city 2,900 miles away, constituted just cause for voluntarily leaving her employment under the existing conditions.

The material facts of the case are as follows:

The claimant, a single girl aged 22 years, resided with her parents in the city of V....., and was employed as a sales clerk at a salary of \$15.00 per week. On October 1, 1945, she left her employment in order to accompany her parents who were moving to their former home in H....., a distance of some 2,900 miles.

On making a claim for benefit on October 29, she was disqualified from receipt of benefit for a period of six weeks, commencing on October 2, 1945, for having voluntarily left her employment without just cause. A court of referees removed this disqualification.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"While the British Umpire decisions are often of value in determining appeals to the court of referees or to the Umpire under the Unemployment Insurance Act, it must be borne in mind that conditions in the two countries are not always identical. In this particular instance the claimant resides in V..... and returned with her parents to her former home in H..... The distance is approximately 2,900 miles. There is no such condition in Great Britain where distances are small and accessibility from one community to another is easy and accomplished in a very short space of time.

"The court of referees, no doubt, went very carefully into all the circumstances and the local conditions prevailing and came to a unanimous decision in the matter.

"Under the circumstances I can see no justification for interfering with this decision and the appeal of the insurance officer is disallowed."

### **Case No. CUB-110. (25 July, 1946)**

**Held:** That a sit-down strike of employees and a concerted refusal to return to work, in an endeavour to hasten the completion of a bargaining agreement, followed by the discharge of the employees, constitutes a work stoppage brought about by a labour dispute. The incident should not be treated as misconduct.

The material facts of the case are as follows:

The claimants were sixty employees of a radio tube factory who became separated from their employment on February 28, 1946. On that date they left their work against the instructions of the supervisors and went into the cafeteria on the premises, where they became seated and requested an explanation from the employer regarding the payment of a retroactive bonus, the negotiations for which were still under advisement by the Regional War Labour Board. They refused to return to their work by 10.15 a.m., when requested to do so by the employer, and were then discharged from their employment.

The claimants applied for benefit on March 6, 1946. The insurance officer disallowed the claims on the ground that they had lost their employment by reason of a labour dispute resulting in a stoppage of work, and they were disqualified for so long as the stoppage continued. The claimants appealed to a court of referees which, by unanimous decision, found that there was no labour dispute involved, but that the claimants had been discharged from their employment for misconduct, and disqualified them for a period of four weeks.

The union, of which the claimants were members, appealed to the Umpire.

### **DECISION**

The claimants lost their employment by reason of a stoppage of work due to a labour dispute.

"There is evidently no dispute as to the facts of the case. The appellant on behalf of all the others associated in this appeal admit contravention of certain sections of the Unemployment Insurance Act and ask for reduction of penalties imposed by the court of referees.

"The question for me to decide in the first instance is whether the facts of the case bring the appellants under the disqualification of Section 43 (a) as originally stated by the insurance officer or whether the appellants come under the disqualification as found by the court of referees in which they state they have been discharged from their employment by reason of their own misconduct.

"In addition to the submissions of the employers and employees there is also a submission on file being Exhibit 7 and dated March 26, 1946. This is an agreement between [the employer] and the [union].

In the presence of ...., Chief Conciliation Officer of the Department of Labour, Province of ...., an agreement was reached on the points at issue.

"In paragraph I of same it states

"that all employees will be rehired as work is available without discrimination. This refers to all employees involved in the present dispute."

"Paragraph 3 states

"no new employees shall be hired before all the employees involved in the dispute have been offered employment as provided for in the collective agreement presently in force between the parties."

"This agreement is signed on behalf of the company by ..... and on behalf of the union by .....

"It will be noted that in both paragraphs referred to, a 'dispute' between the company and the union is mentioned. Under these circumstances there seems to be little doubt that at the time of the original stoppage of work on the morning of the 28th day of February that there was a dispute between the company and its employees. This dispute resulted in a stoppage of work on the morning of the 28th and continued until the agreement was signed on March 26, 1946.

"It might be further pointed out that when the employees 'walked off the job' and went into the firm's cafeteria it was for the purpose of considering working conditions with which they were not satisfied. This resulted in a vote to 'stay off the job.'

"There is no doubt that there was a stoppage of work and the next point to consider is 'if the stoppage was due to a labour dispute'.

"The signed agreement between the company and the union of the 26th March, 1946, specifically refers to the 'dispute' and had there been no dispute there could have been no stoppage of work.

"Having established that a dispute existed between the company and its employees, the disqualification imposed by the court of referees should have been made in accordance with section 43 (a) of the Act which states; that

"the disqualification is to last only so long as the stoppage of work continues."

"In this instance I must rule that the penalty imposed by the court of referees be changed so as to conform to the disqualification imposed upon those who have lost their employment by reason of stoppage of work which was due to a labour dispute and the penalty in these cases should be for the time that the dispute lasts.

"Having come to the conclusion that a dispute existed at the time the stoppage of work occurred it is not necessary for me to consider the question as to whether the penalty imposed by the court of referees was justified or not under the circumstances.

"My conclusion as already intimated is that as the stoppage of work was due to a labour dispute the penalties imposed must be in accordance with the Act: namely, that disqualification for receipt of benefits shall last as long as the stoppage of work continues which in this case was from February 28, 1946 until March 26, 1946."

**Case No. CUB-111. (24 July, 1946)**

**Held:** That a local office was wrong in allowing a bed-ridden claimant who lived within easy access of the local office to make a claim for benefit by post. Personal registration is one of the first tests of capability and availability. A person who is confined to bed but who has the use of her hands is not in a position to meet the usually accepted tests of capability and availability.

The material facts of the case are as follows:

The claimant was employed as a comptometer operator to December 31, 1945, when she was separated from her employment because of an accident which caused her to stay in hospital for three months. Although a local office of the Commission was situated in her home city she was allowed to make a postal claim for benefit on March 28, 1946, as she was then bed-ridden.

On her registration for employment the claimant gave as her secondary occupation, "sewing, mending, soliciting by telephone." The insurance officer considered that there was no reasonable prospect of her obtaining employment, and she was disqualified from receipt of benefit for a period of six weeks on the ground that she was not capable of or available for work, the claim to be reviewed at the end of this period, or earlier if new evidence were presented.

In appealing to a court of referees the claimant stated that she was capable of such work as soliciting by telephone, sewing, knitting, and crocheting, and her appeal was allowed.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was ~~dismissed~~ allowed.

"The court of referees in their decision make reference to B-531 in the Insurance Manual which permits persons living at a distance from a local office, to file an application for benefit by mail, justifying in part their conclusions by citing this section. It should be pointed out that what is contained in the Manual is not part of the Act but a guide to the officials of the organization in carrying out their functions under the Unemployment Insurance Act.

"The relevant sections dealing with the case of the claimant are covered by the benefit regulations made under the Act and are to be found in section 6, (1) and (2). They read as follows:—

"“(1) A claimant shall, as evidence of being unemployed attend at the local office where he last claimed benefit or with the approval of the Commission at some other local office, on every working day or on such days as the Commission may direct, at such times as the Commission may direct; and, if required to do so, shall there sign a register in such form as the Commission may from time to time provide.

"“(2) The Commission may, in any case, dispense with the requirements of sub-section 1 and, in any such case a claimant shall furnish such written evidence of unemployment as the Commission may require."

"The first part of section 6 definitely states a claimant shall, as evidence of being unemployed, attend at the local office.

"Part 2 of this section was placed in the regulations on account of giving facilities for registration to persons who live at a distance where there are no local office facilities available, to file their claims by mail.

"Where persons are within access of a local office it is necessary in accordance with the regulations of the Act to prove capability and availability by attending at the local office and signing a register to prove they are unemployed at such times and on such days as officials of the Commission may deem desirable or necessary. This is required by the Act because registration is necessary to prove that a person is unemployed and that he is available and capable of accepting employment when offered to him.

"Personal registration is really the first essential test of proving both 'availability' and 'capability'.

"From the decision of the court of referees the insurance officer has appealed to me on the following grounds:

"“(1) THAT the court of referees erred in finding that the requirement for personal attendance by a claimant at the local office to prove unemployment, set out in Benefit Regulation No. 6(1) does not apply to this claimant by virtue of Benefit Regulation No. 6(2) and Benefit Manual B-531.

"“(2) THAT in the rule dispensing with personal attendance, set out in Benefit Manual B-531, the words "ordinary transportation" mean transportation ordinarily used by the individual claimant.

"“(3) THAT the claimant having failed to prove employment in the manner prescribed in Benefit Regulation No. 6(1), the claim should be disallowed under provisions of Section 28 (ii) of the Act.

"“(4) THAT the claimant's physical disability as established by the evidence is such as to so restrict the field of possible employment as to render her neither capable of nor available for work within the meaning of Section 28 (iii) of the Act.

"“(5) THAT the court of referees erred in finding that the claimant fulfilled the third statutory condition."

"It is apparent that at the time that the claimant made application for benefit she was confined to her home through physical incapacity and evidently unable to leave the premises. The local office of ..... in allowing the claimant to file a postal claim went somewhat beyond their jurisdiction in permitting an insured person residing within easy access of the local office to file claim for benefit by mail.

"However, as already stated one of the first tests of being capable and available for employment is registration at a local office. If an insured person claims benefit, in order to prove capability and availability they must also be in a position to call at a local office at such time and on such days as the Commission may designate. There is no doubt that in this instance the claimant was not in a position to fulfil this first essential requirement.

"The claimant contends that although unable to follow her usual occupation or other types of office work that she was accustomed to she could in her own estimation perform very restricted light duties in the confines of her own home. From the claimant's submission she was anxious for a very brief period to re-establish herself in a new form

of employment either under contract of services or to become self employed until such time as she could resume her former employment. In such case the onus of re-establishment does not rest with the Commission.

"It must be noted that whilst the claimant is deserving of sympathetic consideration, the Unemployment Insurance Act must be applied in accordance with its provisions.

"The Act does not contemplate the payment of benefit to any person temporarily or permanently disabled from work and as already stated the basic conditions for receipt of benefit are capability and availability for work.

"If the claimant's contentions in this case were to be held as a valid reason for the payment of benefit it would permit insured persons confined to the home, able to sit up in bed and use their hands to obtain benefit. In the present instance it would appear that the claimant is not in a position to meet the usually accepted standards of capability and availability within the meaning of the Act.

"The appeal is allowed and the disqualification of 6 weeks imposed by the insurance officer is effective as from the time that this decision is communicated to the claimant."

#### **Case No. CUB-112. (24 July, 1946)**

**Held:** That leaving one's employment in order to look after personal business affairs cannot be regarded as just cause within the meaning of the Act.

The material facts of the case are as follows:—

The claimant, 27 years of age and married, was employed as a layout man from August 13, 1945 to April 6, 1946, when he left his employment voluntarily in order to return to his former place of residence "so that we might release my mother-in-law who had been in charge of our home since we went to W..... owing to my wife's health."

He made claim for benefit on April 18, and was disqualified by the insurance officer for a period of six weeks, commencing April 7, 1946, for having voluntarily left his employment without just cause. His appeal from this disqualification was allowed by a court of referees.

The insurance officer appealed to the Umpire on the ground that leaving one's employment to attend to personal business does not constitute just cause.

#### **DECISION**

The appeal was allowed.

"From the evidence and facts before me it appears that the claimant and his wife decided to leave their home town of Wh....., to reside in W..... on account of the health of Mrs. D..... According to further evidence, the claimant and his wife had certain business interests in their home town which were being looked after by the claimant's mother-in-law, Mrs. F..... It is further indicated in the submissions that the mother-in-law decided to go to I..... in the U.S.A.

"In Exhibit No. 5 same being a letter from claimant to Regional Insurance Officer dated May 30, 1946, it states in part as follows:—

"We decided to leave the hospital in the care of two R.N. nurses and move to W..... where Mrs. D..... underwent treatment for her condition. Not many months had elapsed when the two nurses walked out on their five year contract . . .

"Rather than have us come all the way back from W..... at such a critical time, my wife's parents Mr. and Mrs. F..... decided to turn the place into apartments . . .

"Mr. and Mrs. F..... having decided to move to I..... U.S.A., it became necessary for us to come home and attend to our affairs."

"It is obvious from this letter of the claimant, that his reason for leaving his employment in W..... was to return to his home town of Wh....., . . . . . , in order to look after his business affairs that had been taken care of in the meantime by Mr. and Mrs. F.....

"Leaving one's employment in order to look after personal business affairs cannot be regarded as 'good cause' within the meaning of the Act.

"The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefits for a period of six weeks as from the date that this decision is communicated to the claimant."

### **Case No. CUB-113. (25 July, 1946)**

**Held:** That a medical certificate, produced by a claimant in proof of his allegation that he was unable to perform work of which he had been notified, must confirm the allegation if the claimant is to be relieved of disqualification for refusing to apply for suitable employment. A chairman of a court of referees must not grant leave to appeal to the Umpire except in a case in which there is a principle of importance involved or where special circumstances warrant an appeal.

The material facts of the case are as follows:

The claimant, a single man, aged 41 years, was last employed in a munitions plant until August 4, 1945, at a wage of 74 cents per hour. His initial application for benefit made on August 24, 1945, was allowed. On April 12, 1946, he was notified of employment as a labourer with a canning company at wages of 52 cents per hour, for which he refused to apply because of low wages and long hours of work. The insurance officer disqualified him for a period of six weeks, and he appealed on the ground that his doctor had told him not to do any strenuous work, and that he had a hernia and lacked proper protection for it.

A court of referees dismissed his appeal, finding that his medical certificate had not proved to the satisfaction of the court that his condition would have handicapped him in the work of which he was notified.

The claimant appealed, with permission of the chairman of the court.

### **DECISION**

The appeal was dismissed.

"In the claimant's appeal to me no new facts are cited. In this instance there is no point of law involved nor is there any dispute as to the facts of the case.

"The claimant was present in person at the hearing and the court of referees had the opportunity of hearing evidence in person and witnessing the demeanour of claimant. They came to a unanimous decision and there is no doubt in the minds of any of the members of the court that their conclusions were in accordance with the evidence and submissions.

"Section 58 of the Act permits the chairman of a court of referees to grant leave to appeal to the Umpire where there is a principle of importance involved or where special circumstances are shown.

"In this instance there appears to be no principle of importance involved nor any special circumstances which warrant an appeal to the Umpire.

"Recently there has been quite a number of appeals granted contrary to the conditions outlined in Section 58.

"When a chairman of the court of referees grants an appeal under this section of the Act, it is his duty to state clearly what the special circumstances are or what principle of importance is involved, which warrants such an appeal.

"The appeal is dismissed."

#### **Case No. CUB-114. (25 July, 1946)**

*Held:* That an insured person is not restricted as to the type of work which he performs as a subsidiary occupation. He may follow whatever occupation he is capable of performing.

The material facts of the case are as follows:—

The claimant, 62 years of age and married, worked as a watchman for a mining company from December, 1941 to April 10, 1945, and as a theatre caretaker from December 4 to December 31, 1945. On making claim for benefit on January 3, 1946, he stated that he was employed as a janitor by a bank, working from approximately 7 to 8.30 each morning and evening, and receiving a salary of \$27.50 per month.

The insurance officer considered that the claimant could not carry out his duties as bank caretaker in addition to and outside the ordinary working hours of his usual employment as a caretaker, and disqualified him on the ground that he could not be deemed to be unemployed.

A court of referees found that the remuneration was less than \$1.00 per day, and that the work could be performed outside the ordinary working hours of the claimant's usual occupation, the usual hours of a watchman being 7 p.m. to 7 a.m., and those of a caretaker usually would not commence before 8.30 a.m. and would end before 7 p.m. The disqualification was removed.

The insurance officer appealed to the Umpire, contending that the provision "occupation .... in addition to .... his usual employment" connotes employment other than that which is the claimant's usual occupation.

#### **DECISION**

The appeal was dismissed.

"There is no dispute as to the facts of the case. However, there is disagreement in regard to the interpretation of Section 33(b) of the Act.

"From the submission of the insurance officer, his interpretation implies that the claimant was not entitled to benefit, because he was following his usual occupation outside the hours of the ordinary working day and in order to entitle claimant to receive benefit he should be following an occupation other than his ordinary one which in this case was that of janitor or watchman.

"Section 33(b) states ..... second line  
"he is following an occupation, etc.'

"This wording does not restrict an insured person as to the type of work he shall perform outside the hours of the ordinary working day. It permits an insured person to follow whatever occupation he is capable of performing.

"In this case the claimant was employed outside the ordinary working day in his usual occupation, that of a janitor. The amount he received from this employment was less than the \$1.00 per day. Had the claimant been so employed during the ordinary working day he would then be classified in accordance with the second schedule to the Act and in accordance with the amount of his earnings.

"Had it been the intention of the Act to restrict an insured person as to the type of work he should follow outside of his ordinary working hours reference undoubtedly would have been made to same in the Act.

"The claimant in the present instance is entitled to follow the occupation that he does outside of his ordinary working hours and not come under the disqualification of Section 33(b).

"The appeal of the insurance officer is dismissed."

### **Case No. CUB-115. (25 July, 1946)**

**Held:** That just cause for voluntary separation had been established by a claimant who lived 29 miles from his place of employment and who was unable to secure family living accommodation closer to his work, neither public nor private transportation being available.

The material facts of the case are as follows:

The claimant, a married man, voluntarily left his employment in B..... because no transportation facilities were available to take him to his work, reported to be eleven miles from his home in W.... The private arrangement which he had made when taking this work was no longer available to him. He was unable to secure living accommodation for his family within a reasonable distance of his work and would be unable to support himself and his family if he took board and lodging for himself near his employment. He was disqualified by the insurance officer for a period of six weeks, on the ground that he had voluntarily left his employment without just cause, and this decision was upheld by a majority decision of the court of referees. The court reheard the case on new facts, i.e., that the claimant's wife was pregnant and he did not wish to leave her alone, but the decision of the insurance officer was again upheld.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the evidence and submission it is indicated that the claimant obtained the work in B..... on his own accord. He left his employ-

ment only when there was no transportation facilities suitable. In the submissions of the insurance officer it is stated that the distance from W..... to B..... is approximately eleven miles. The claimant in his submissions states that the distance was approximately sixty miles for the return journey. In ascertaining the actual facts as to the distance from W..... to B..... it is indicated that the distance is twenty-nine miles in each direction. It is also indicated by correspondence with the office of the Unemployment Insurance Commission at W..... that there is no means of transportation either by train or by bus which would permit the claimant to have attended his work in B....

"It would appear that the original disqualification imposed in this case may have been due to a misapprehension of the distance from W..... to B....., which was stated to be eleven miles instead of twenty-nine miles.

"In view of all the circumstances of the case, the claimant had just cause in leaving his employment and the appeal is allowed."

#### **Case No. CUB-116. (25 July, 1946)**

**Held:** That to establish good cause for antedating a claim for benefit a claimant must show that he was prevented from attending at a local employment office by conditions over which he had no control.

The material facts of the case are as follows:

The claimant was employed as a railway switchman when he was laid off owing to a labour dispute in the mines in the area where he was employed. Two weeks later he filed a claim for benefit and made application to have his claim antedated to the day following his separation, contending that as this was his first claim he did not have an understanding of the Unemployment Insurance Act.

The insurance officer allowed the claim but did not approve the antedating. The court of referees unanimously upheld the decision of the insurance officer.

The union of which the claimant was a member appealed to the Umpire on behalf of the claimant and six other claimants whose circumstances were practically identical, on the ground of "insufficient publicity being given to the Act in the district."

#### **DECISION**

The appeals were dismissed.

"Local ..... [of the union], requested an oral hearing which was held in Ottawa on Wednesday, June 26, 1946, at which the union were represented as was also the Unemployment Insurance Commission. During the course of the hearing it was pointed out by the Unemployment Insurance Commission representative that D..... has a population of 2,748 persons according to the 1941 census, and since the operation of the Act there has been 2,038 initial claims filed in the local office. One of the claimants mentioned in the appeal had also previously filed a claim for benefit.

"The Unemployment Insurance Commission it was stated has given publicity to the working of the Act by the publication of more than two millions of employees' booklets which have been distributed to

all employers in the country for distribution to employees as well as to union officials. In these booklets information is given as to what action an insured person should take when separated from employment. A fairly large amount of newspaper advertising has also been carried on, copies of which were submitted at the hearing.

"In the town of D..... there is no letter-carrier service and all residents have to call at the local post office for their mail. It was stated that in the post office posters were prominently displayed which advised insured persons what course to follow upon becoming unemployed. Publicity has also been given to the operation of the Act over the radio which covered the D..... area. These were some of the statements given relative to the publicity carried on by the Department of Labour in regards to acquainting insured persons with the operations of the Unemployment Insurance Act.

"In a statement by the claimant of date Nov. 8, 1945 in his appeal to the court of referees, and quoted above the reason given for not filing his claim sooner was that he expected the mines would again operate at any time but this did not materialize. When however these mines were idle for three weeks he filed a claim asking that it be ante-dated from time of commencement of unemployment.

"This statement from claimant probably gives the explanation as to why no claims were filed at the appropriate time.

"In cases where an insured person requests a claim for benefit to be ante-dated, to establish 'good cause' he must show:

"That he was prevented from attending at a local employment office by conditions over which he had no control.

"In previous decisions given on questions pertaining to ante-dating I have stated that the Act has been in operation for several years and that lack of knowledge or ignorance of its provisions cannot now be accepted as a valid reason for non-compliance.

"Under the circumstances no good reasons have been submitted to warrant ante-dating of claims and the appeals are dismissed."

### **Case No. CUB-117. (6 September, 1946)**

**Held:** That "unsatisfactory conduct" is not misconduct. Misconduct cannot be assumed; it must be conclusively and specifically proven. When, due to alleged unsatisfactory services, an employer demands the resignation of an employee, under threat of dismissal, the separation from employment is not voluntary.

The material facts of the case are as follows:

The claimant was employed as a blockman (territory representative), by a firm of agricultural implement manufacturers from 1940 to December 1, 1945. He stated that separation was due to his pending demotion to a position with a lower salary. The employer said that his conduct was unbecoming to the position which he held, that his services were unsatisfactory, and, after an interview, he was allowed to resign his position rather than be dismissed.

He was disqualified for a period of six weeks for having voluntarily left his employment without just cause, and a majority decision of a court of referees upheld this decision.

The claimant appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the submission and facts before me it is apparent that for some time the conduct of the claimant had not been satisfactory to his employers. On several occasions the matter of the claimant's relationship with the company was under consideration and finally it resulted in the company demanding his resignation.

"The court of referees in their decision state that:

"'Owing to the attitude and conduct of the employee, details of which have not been specifically stated, the employer asked for the resignation of the employee.'

"In this decision, two points are raised for consideration. The first is the nature of separation from employment:

"Whilst the claimant was not actually discharged from his employment, his separation can hardly be said to have been of a voluntary nature, as his employers no longer wished to avail themselves of his services and demanded his resignation.

"Secondly, as regards the conduct of claimant, the court of referees decision states,

"'details have not been specifically stated.'

"Misconduct cannot be assumed; it must be conclusively and specifically proven. In this instance this basic rule of evidence has not been complied with.

"Under the circumstances the appeal of the claimant is allowed."

## Case No. CUB-118. (6 September, 1946)

*Held:* That an unmarried person had not established just cause for voluntarily leaving his employment away from his home town when wages received were at the accepted rate for the type of work performed.

The material facts of the case are as follows:

The claimant, 23 years of age and unmarried, was employed as a card-tender from October 9 to December 8, 1945, at a wage of 47 cents per hour. He made claim for benefit on December 12, stating that he had left voluntarily as he worked only 50 hours per week, and it was impossible to live on his pay. The employer stated that he had left to return to his home, which was about 500 miles away.

The insurance officer disqualified him from receipt of benefit for a period of six weeks for having voluntarily left his employment without just cause. A court of referees reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and the submissions before me, it would appear that the claimant wishing to return to his former home residence voluntarily left his employment. He further claims the wages he was receiving were insufficient.

"The wages he received at W....., were at the accepted rate of pay for the type of work that he was performing and, therefore, this contention cannot be accepted as a valid reason within the meaning of the Act. According to the evidence, the weekly earnings of the claimant were \$23.50 per week and his statement of expenses in relation to his earnings does not appear to be in accordance with the facts.

"The claimant having left his employment without just cause, the appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date when this decision is communicated to him."

### **Case No. CUB-119. (6 September, 1946)**

**Held:** That a bona fide intention to be married and to secure employment in a distant city is just cause for a woman to leave her employment voluntarily.

The material facts of the case are as follows:

The claimant, an unmarried woman 30 years of age, was employed as a bank ledger-keeper in the city of M..... from 1940 until 29 March 1945, at a salary of \$925.00 per annum. On April 11 she made a claim for benefit at the local office in M....., stating that she had left her employment voluntarily as she had intended to go to the city of W....., a distance of some 1,400 miles, to be married, but that her marriage had been postponed until September.

The insurance officer disqualified her from receipt of benefit for a period of six weeks, commencing March 30, for having voluntarily left her employment without just cause. In appealing to a court of referees, which allowed the appeal, the claimant stated that due to unforeseen circumstances she was unable to carry out her intention to be married at an early date.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The question for me to decide, is whether an insured person who leaves her employment in order to get married in another city, where she intends securing suitable employment, can be held to have left her employment without just cause.

"I do not think there should be any doubt in a matter of this kind. There is no dispute as to the facts of the case. The claimant has proved that she was to go to W..... where she intended working, and there become married. Due to unforeseen circumstances, her plans were changed.

"I consider that, when the claimant left her employment under these circumstances, she had just cause for doing so.

"Therefore, the appeal of the insurance officer is dismissed."

### **Case No. CUB-120. (6 September, 1946)**

**Held:** That good cause for refusal to apply for a situation in suitable employment had not been shown by a claimant, unemployed for thirteen months, who refused to apply because she wished to complete a stenographic course.

The material facts of the case are as follows:

The claimant, a single girl, was employed as a cutter and counter for a paper company for approximately ten years, when she voluntarily left her employment. Six months later she filed a claim for benefit, which was allowed. Seven months after filing her claim the local office notified her of a permanent position as a cashier and waitress with a restaurant. She refused to apply for this situation, stating that in another two weeks' time she would have completed a stenographic course, and did not want any other job except that of a stenographer. The insurance officer disqualified the claimant for a period of six weeks on the ground that she had refused to apply for a situation in suitable employment, and this decision was reversed by unanimous decision of the court of referees.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"In considering the evidence before me and the facts as submitted, it is apparent that the claimant, when she was offered employment as a cashier and waitress was not in a position to accept this employment, as according to her own statements, she still had two weeks further study before she would finish her course as a stenographer and wanted to complete the course.

"Her claim to a position as a stenographer may have carried more weight had this been her usual occupation. For ten years she had worked as a cutter and counter clerk for a paper company at a rate of pay of 50c per hour. The wages offered at the restaurant was almost equivalent to that which she formerly received. The claimant is attempting to re-establish herself in the labor market, under a new set of conditions which did not prevail at the time she was separated from her last employment. It must be taken into consideration that the claimant, had received benefits for 175 days which is equivalent to 9 weeks, and, had ample opportunity during this period of obtaining whatever employment was considered suitable if same was available. Section 31 of the Act states:

"An insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that

(b) he has declined

(iii) an offer of employment of a kind other than employment in his usual occupation at wages lower, or on conditions less favourable, than those which he might reasonably have expected to obtain, having regard to those which he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed:

"Provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the

insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"The claimant had already been unemployed for a considerable length of time and the work offered was evidently at the recognized rate of pay for such type of employment. Claimant was not available because she had not finished her course at school which she was anxious to complete.

"In view of the time claimant had been unemployed the employment offered must be regarded as suitable.

"The claimant, therefore, comes under the disqualifications as provided under Section 43 of the Act which states as follows:

"'An insured person shall be disqualified for receiving benefit—

(b) if on a claim for benefit it is proved by an officer of the Commission that the claimant—

(i) after a situation in any employment which is suitable in his case has been notified to him by an employment office or other recognized agency, or by or on behalf of an employer as vacant or about to become vacant, has without good cause refused or failed to apply for such situation, or refused to accept such situation when offered to him.'

"Under the circumstances, the appeal of the insurance officer is allowed, and the claimant is disqualified from receipt of benefits for a period of six weeks as from the date that this decision is communicated to her."

### **Case No. CUB-121. (6 September, 1946)**

**Held:** That permanent employment is not, by reason only of its permanency, unsuitable for an insured person who desires temporary employment.

The material facts of the case are as follows:—

The claimant, aged 23 years and single, was employed as a radio assembler in the city of T..... until June 7, 1946, receiving a wage of 45 cents per hour. She returned to her home in R....., a small village about 1,700 miles away and made a postal claim for benefit, stating that she had been laid off owing to a reduction of staff.

She was then notified of permanent employment as a clerk in the bank in R....., but refused to apply for this position, returning the "introduction to the employer" with the notation that he was not in need of help. The employer reported that the claimant herself had not applied for the position but that her father had told him that she was at home for a short time only, and wished temporary employment. This would not be satisfactory to the employer.

The insurance officer then disqualified the claimant from receipt of benefit for a period of six weeks for having refused or failed to apply for a situation in suitable employment. A court of referees reversed this decision, remarking that "the work offered was actually not available to her".

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"It is evident from the submissions made, that the claimant did not call in person at the ..... at R....., where a position was available at a salary of \$750 to \$800 per year, which is the recognized rate of pay for this class of work in the district.

"Shortly after the offer of employment was made, the claimant carried out her intention of going to K....., where she now resides.

"It is apparent from these facts that the claimant was only in R..... for a temporary period on her way West, and for this reason, evidently did not apply for the permanent position that was available.

"The fact that she did not carry out the instructions that were given to her by an officer of the Commission, disqualifies the claimant for receipt of benefit in accordance with Section 43(b) (i) of the Act already quoted.

"Under these circumstances, the appeal of the insurance officer is allowed, and the claimant is disqualified from receiving benefit for a period of six weeks as from that date that this decision is communicated to her."

### **Case No. CUB-122. (6 September, 1946)**

**Held:** That employment as a confectionery packer at a wage of 35 cents per hour, the prevailing wage for such work, was suitable employment for a woman who had been unemployed for more than seven months, and who had been formerly employed as a packer in a brewery at a wage of \$33.15 per week.

The material facts of the case are as follows:—

The claimant, a married woman, was employed as a packer in a brewery from November, 1942 to August 11, 1945, at a wage of \$33.15 for a 44-hour week. Her claim for benefit, made on March 20, 1946, was allowed.

On March 30 she was notified of employment as a confectionery packer at the prevailing wage of 35 cents per hour for a 44-hour week. She interviewed the prospective employer but refused to accept the employment on account of the low wage, and the insurance officer disqualified her from receipt of benefit for a period of six weeks. A court of referees, by a majority decision, upheld the disqualification.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"In going very carefully over the submissions it is indicated that the claimant was separated from her employment on the 11th day of August, 1945. From that day until the 20th day of March the records show that the claimant made no effort whatever to obtain employment and that she had, to all practical purposes for this period, withdrawn from the labour market, nor is there anything in the record to indicate the reason why the claimant made no effort to obtain employment during this period or whether she was engaged solely in her

household duties as a wife and mother. Two other offers of employment had been refused by the claimant, because she considered them unsuitable.

"The claimant having evidently given the whole of her time to household duties between the termination of her last employment and the time she made a claim for benefit, a period over seven months, to all intents and purposes had withdrawn herself from the labour market. She then decided to make application for benefit and at the same time re-enter the labour market.

"In so doing, she attempts to re-establish herself in the labour market under a new set of conditions which did not prevail at the time she was separated from her last employment.

"Under these circumstances she naturally would have to take whatever work was offered even if it was different from that which she formerly was engaged in, and at a rate of pay that may not correspond with that which she formerly received, provided that such pay was in accordance with the conditions as set out in the proviso of Section 31(b) of the Act which states:

"'provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"In this instance according to the evidence before me it is stated that the wages offered, 35 cents per hour, are the accepted rate of pay for this particular type of work.

"In refusing to accept this employment, the claimant has brought herself within the disqualifications as provided for in section 43(b) (i) where she has 'without good cause refused or failed to apply for such situation or refused to accept such situation when offered to him.'

"The appeal is, therefore, dismissed."

#### **Case No. CUB-123. (6 September, 1946)**

**Held:** That a claim for benefit made after the cessation of a work stoppage caused by a labour dispute is not subject to adjudication under the section of the Act which deals with labour disputes.

The material facts of the case are as follows:

The claimant was last employed by a brewery company as a mechanic from 1935 until March 30, 1946. A partial stoppage of work took place on March 28, 1946. The claimant worked for two days beyond the stoppage, after which he failed to return to his employment because the plant was picketed, and the employer sent him notice of separation. He made claim for benefit on April 12, 1946, giving as his reason for separation that he had been dismissed on account of a strike which was still in progress. The insurance officer disqualified him on the ground that he had lost his employment by reason of a

stoppage of work due to a labour dispute, for so long as the stoppage continued, and on April 15, 1946, the disqualification was lifted because it was believed that a general resumption of work had taken place on that day. The claimant appealed to a court of referees which, by unanimous decision, allowed the claim.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the evidence and submissions made to me there is no doubt that there was a dispute at the plant and that the claimant lost his employment by reason of such labour dispute. In going over the submissions I find in Exhibit 3 a statement of the conditions at the plant during the period in question under the signature of....., insurance officer, in which he states as follows:

"'On April 9th, 1946, out of the usual total of 1,500 employees, 1,130 were at work; on April 10th, 72 new employees were engaged, 86 on the 11th, 99 on the 12th, 65 on the 15th, 20 on the 16th and 34 between the 17th and 30th.

"'From the above figures which show a substantial resumption of work on the 12th of April 1946, I think it is reasonable to conclude that there was a termination of the stoppage of work on that date in spite of the fact that the dispute itself was still unsettled.'

"Further in the same Exhibit it states:

"'that the claimant does not claim to be relieved of disqualification under Subsections (i) and (ii) of Section 43 (a) of the Act, and it is recommended that this claim be disallowed and that claimant be disqualified for the duration of the stoppage of work due to the labour dispute (Section 43 (a) of the Act), that is up to April 12th, 1946, inclusively.'

"From these quotations taken from one of the exhibits it is indicated by an officer of the Commission that the stoppage of work ceased on April 12th, 1946.

"The date on which claimant made claim for benefit was also on the 12th day of April 1946.

"A claim for benefit, made after a stoppage of work ceases to exist, is valid and comes within the meaning of the Act. The disqualification imposed, on account of loss of employment due to a work stoppage according to Section 43(a) of the Act, is as follows:

"'An insured person shall be disqualified for receiving benefit if he has lost his employment by reason of a stoppage of work, which was due to a labour dispute at the factory, workshop or other premises at which he was employed, except where he has during a stoppage of work, become bona fide employed elsewhere or has become regularly engaged in some other occupation, but this disqualification shall last only so long as the stoppage of work continues.'

"It is evident, that the stoppage of work had ceased to exist on the 12th day of April 1946, the same day on which claimant made

application for benefit. Such being the case, he is entitled to receive benefit as of this date namely: April 12th, 1946.

"In view of these circumstances, it is not necessary for me to consider the other questions raised in the decision given by the court of referees.

"Therefore the appeal of the insurance officer is dismissed, and the claimant is entitled to benefit as from the 12th day of April, 1946."

#### **Case No. CUB-124. (6 September, 1946)**

**Held:** That an insured person who has a grievance about his rate of pay should attempt to have the grievance rectified before voluntarily leaving his employment. Leaving on account of such a grievance is not justified when the pay received is at the rate agreed upon by employer and employee.

The material facts of the case are as follows:

The claimant, a married man aged 60 years, was employed as a porter by a department store from August 20, 1945 to June 18, 1946, at a salary of \$22.50 per week. He left this employment voluntarily, and on making a claim for benefit he stated that there was a deviation in salaries among porters, and he was unable to make ends meet on his salary.

The employer reported that those porters who had proved efficient in their work had received increases. No change in the claimant's salary was made. The insurance officer disqualified him for a period of six weeks for having voluntarily left his employment without just cause. A majority decision of a court of referees upheld this disqualification.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From the majority decision of the court of referees, the claimant has appealed to me. In his submissions no new facts are stated.

"The question to decide, is whether the claimant was justified in leaving his employment. The reasons for his separation are admitted. Other employees doing somewhat similar type of work received increases in pay. The claimant did not receive similar recognition, because his employers considered his services were of such a nature that did not warrant this recognition on their part. There was no reduction in his pay, it being the same as at the time that he commenced in the company's employ. He left their employ voluntarily, without attempting to remedy any grievances he may have felt he had in regards to the condition of employment.

"Under the circumstances, there is not sufficient reason for disturbing the majority decision given by the court of referees. The appeal is dismissed."

#### **Case No. CUB-125. (6 September, 1946)**

**Held:** That failure to comply with the Act and the Regulations, such as failure to furnish required information by completing forms, e.g., the unemployment register, which is sent to postal claimants, is sufficient ground for disqualification.

The material facts of the case are as follows:

The claimant, a mechanic, was last employed for a period of approximately two months when he was laid off for lack of work. Two months later he filed a postal claim for benefit, which was allowed. As he failed to return the unemployment register which had been sent to him weekly by the local office, a notice of "failure to report" was sent to him and on receiving this notice he wrote and stated he was not filling out any more forms until he received a cheque. Apparently the claimant did not fill out the forms sent to him until some four months later and was then claiming benefit for the whole of the period between the date he filed his claim and the date he returned to work.

The insurance officer disallowed the claim on the ground that the claimant had failed to make application in the prescribed manner, and on appeal to a court of referees, before which the claimant appeared, the court, by a unanimous decision, reversed the decision of the insurance officer and allowed benefit to the claimant.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"In the claimant's letter to the Commission at ..... already quoted above, dated February 5th, it is evident that the claimant definitely refused to report, because of non-receipt of a cheque which he claims was promised him on January 2nd. In this letter he stated:

"I am not filling out any more forms until that cheque arrives."

"This sentence indicates that the action of the claimant was deliberate in refusing to comply with the provision of the Act.

"It is a common understanding of the administration of the Act, that some time is required before a cheque can be mailed to an applicant for benefit after a claim has been made. First, the nine waiting days must be fulfilled, after this, a week's unemployment must take place in order to qualify for a full week's benefit. When these two considerations have been completed together with other necessary formalities, a cheque is sent to claimant for his first week of unemployment. Had claimant made inquiries as to the cause of delay, he would have been notified of these facts.

"The court of referees refers to information given to claimant by a person in the post office, and evidently this had some influence in their decision.

"When a claimant or an insured person desires information in reference to matters pertaining to the Unemployment Insurance Act, such information should be obtained from the employment offices of the Commission. It is apparent that the claimant refused to comply with essential provisions of the Act and Regulations.

"Under the circumstances, the appeal of the insurance officer is allowed, and the claimant is disqualified from receiving benefit for a period of six weeks as from the date that this decision is communicated to him."

**Case No. CUB-126. (6 September, 1946)**

**Held:** That removal of a claimant from a large centre of population (her student husband having finished the college year), to the home of her parents in a rural community 1,500 miles away, is indicative of a desire for a holiday rather than a desire for employment, and her plea that she could not live on \$10.00 per week which she received for part-time employment did not constitute just cause for voluntary separation.

The material facts of the case are as follows:

The claimant left her employment at the close of the school year to accompany her husband, a university student, to the home of her parents who lived on a farm near L....., some 1,500 miles away. The insurance officer disqualified her for a period of six weeks for having voluntarily left her employment without just cause. The claimant appealed to a court of referees, stating that employment could not be found in the large city of T..... where the university is located, but there was hope of obtaining it in the rural area in which the parents' home was situated. (This referred, presumably, to employment for her husband.) The court removed the disqualification.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was allowed.

"It appears that the court of referees in giving their decision did so on the basis that the earnings of the claimant was not sufficient to maintain her if she remained behind in the City of T..... It also states that the husband was out of work and had no income. These conclusions of the court of referees must be taken into serious consideration. There is no evidence to show whether the claimant or her husband attempted to find employment during the summer vacation period of the University. There is nothing to indicate further, that the claimant or husband contacted the T..... Office of the Commission with a view of obtaining either new employment or additional employment.

"In regard to the husband of the claimant, there is an exhibit on record same being a letter dated August 7, 1946, from the Department of Veterans Affairs being exhibit IX, which states in part as follows:

"That benefits are available for him (the husband) should he apply during the vacation period, subject to him being prepared to take any type of work offered to him considered suitable and within his physical capability, as he is classed as a student, unskilled. The D.V.A. checked its files and Mr..... has not made any application for benefits."

"From the evidence and submissions in the case which are not disputed, it appears that immediately after the close of the University term in the City of T....., the claimant and her husband decided to leave their home in T..... and go and reside with her parents at L....., a distance of approximately 1,500 miles.

"L..... is a village in ..... with an approximate population of 450 persons for the whole municipality.

"It is also stated in the evidence that the duration of their stay in L..... would be until such time as the University term at T..... would commence in the Fall.

"The lowest fare from T..... to R....., the nearest junction point to L....., is \$69.70 return for one person, making a total of \$139.40 for both. This is coach fare, and travel in tourist sleepers would be considerably more.

"An insured person to qualify for benefit must be

"(1) Capable and available for employment when offered.

"(2) Must be prepared to accept without delay an offer of employment when such is offered by the agents of the Unemployment Insurance Commission or other recognized agencies.

"It would appear to me from the submissions made in this case that the claimant and her husband left T..... for L....., more for the purpose of a vacation than with the intention of obtaining employment.

"It is not the intent of the Act to allow benefit to be paid to insured persons when they are on voluntary vacation.

"Under the circumstances, the appeal of the insurance officer is allowed and the disqualification of six weeks imposed by the insurance officer is made effective as from the date that this decision is communicated to the claimant."

### **Case No. CUB-128. (6 September, 1946)**

**Held:** That insured persons who live in, or on the outskirts of, a large industrial area, must be prepared to accept suitable employment anywhere within that area.

The material facts of the case are as follows:—

The claimant, a power sewing machine operator, made claim for benefit six months after separating from her employment and three weeks later refused to apply for a situation in her usual occupation in an adjacent city, at the prevailing rate of pay, on the ground that her domestic circumstances rendered the work unsuitable. Acceptance of the situation would have necessitated three hours' travelling time daily, in addition to eight hours of work. She was disqualified for a period of six weeks for refusing without good cause to apply for a situation in suitable employment. She appeared before the court of referees and informed the court that she had two children aged 10 and 13 years respectively, and that her husband had just recovered from an illness and still required special dietary care. The court unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the facts and submissions made, it is shown that the claimant was separated from her employment on the 28th day of August, 1945, and did not make an application for benefit or re-employment until the 22nd day of February, 1946, approximately six months.

"During this whole period, it is evident that the claimant had practically withdrawn her services from the labour market. It is also indicated that there is no prospect of employment for the claimant in her home town and that, if she were to re-enter the labour market in the work to which she was accustomed, it would have to be at some place other than the area where she resides.

"The question of the claimant's availability must also be taken into consideration. If she insists upon working only in the area in which she resides and where no work is available, she is restricting herself in such a manner as to be not available within the meaning of the Unemployment Insurance Act. To be available for employment, a person must be prepared to accept a reasonable offer of employment when offered to her by the officials of the Unemployment Insurance Commission.

"As regards the question of distance,..... is regarded as being in the greater T..... area where reasonable transportation facilities are available and where it is not uncommon for many people residing in this particular area to work in the city of T..... The fact cited by the claimant, that she paid her contributions in the ..... area entitles her to obtain employment or benefits in that area, is contrary to the whole meaning of the Act. If persons were to receive benefit and employment only in the areas in which they reside, thereby not being available for employment in areas where work is plentiful it would as stated, be contrary to the provisions and purpose of the Act, and detrimental to insured persons.

"According to the claimant's own statement, 'she has home responsibilities, as recited in the decision of the court of referees and already above quoted. These must considerably restrict her in her availability to accept employment, and are primarily the reasons why she was unable to accept the employment offered.'

"Claimant withdrew herself from the labour market for a period of six months. She then applied to the local employment office to obtain benefit, and at the same time, re-enter the employment market. There is no dispute otherwise as to the suitability of the employment offered.

"Under the circumstances the appeal of the insurance officer is allowed and the disqualification imposed in the first instance is made effective as from the date that the claimant is notified of this decision."

#### **Case No. CUB-129. (6 September, 1946)**

**Held:** That employment which required fifty minutes' street car travel each way, but which in other respects was suitable to the claimant, was not unsuitable, in view of the fact that it was the normal practice for persons in that area to travel this distance daily to and from employment.

The material facts of the case are as follows:—

The claimant, a married woman and the mother of two children, separated from her husband, was employed for six months as a government postal clerk, working from 6 p.m. to 1 a.m. at a wage of 52 cents an hour. Two months after losing her employment she was referred to work as a "home aide" at 40 cents an hour, plus car fare, travel time being fifty minutes each way. The hours of employment were 7 p.m. to 12 midnight, three evenings a week. She claimed that this was not

her type of work and that the distance from her home was too great, and the insurance officer disqualified her for a period of six weeks on the ground that she had refused without good cause to apply for a situation in suitable employment. The claimant appeared before a court of referees, which reversed the decision of the insurance officer, being of the opinion that she should have been allowed a longer period in which to secure the type of work she desired.

The insurance officer appealed to the Umpire.

### DECISION

The appeal was allowed.

"It is obvious, that the domestic circumstances in this case were of such a nature, that the availability of the claimant is very restricted, and, that she is only able to accept employment in the unusual hours of 7 p.m. to 1 a.m. These conditions of employment would naturally restrict the type of work that was available. The work she was performing as a postal clerk, was of a temporary nature and was due to war conditions.

"This avenue of employment no longer exists, and cannot be taken as a precedent for the only type of work she was capable of performing or the type of work she should accept. Her previous employment record shows that the claimant had been employed as a 'bar wrapper' with ..... , for a period of five years, just prior to her marriage.

"With regard to the claimant's objection to distance of employment from her home, it is a normal practice for persons in the ..... area to travel this distance daily to and from their places of employment.

"The question to be considered, therefore, is whether the work offered was suitable under the circumstances. It was work in a home three nights per week at the accepted rate of pay, and during hours which the claimant herself had suggested. Had the claimant been so employed, she would have had ample opportunity in the meantime to obtain other employment if such was available. In addition, the claimant would still have been entitled to receive insurance benefit for two days during the week in which she was employed.

"In view of all the circumstances and restrictions placed upon the type of work the claimant was prepared to accept, the employment offered, even though it was three days per week, must be regarded as suitable in the circumstances, and the appeal of the insurance officer is allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks from the time that this decision is communicated to her."

### Case No. CUB-130. (6 September, 1946)

**Held:** That ignorance of the provisions of the Act cannot be accepted as good cause for delay in making a claim for benefit. Expectation of an early recall to former employment does not establish good cause for neglecting to file a claim.

The material facts of the case are as follows:

The claimant was employed for approximately 17 months as a strawboss and was separated from his employment due to work

shortage. About a month later he filed a claim for benefit and requested that his claim be antedated to the day following his separation from employment. He gave as his reason for delay in not applying at an earlier date that he had been temporarily laid off and expected to be recalled any day, and that he did not know until advised by neighbours that he should have applied for Unemployment Insurance benefit. The insurance officer did not approve of the antedating and the court of referees reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"In several previous decisions, I have already stated that ignorance of the provisions of the Act cannot now be accepted as good cause for delay in making a claim for benefit.

"In this particular instance, it is evident that the claimant showed complete indifference in his rights that he had under the Act. He did not file a claim for benefit, for the obvious reason that he expected to be recalled back any day to his former employment. This admission by the claimant indicates that he did not anticipate he would derive any immediate or future advantage from filing a claim for benefit.

"In a more recent decision dealing with the question of antedating of claims, ..... CUB-116, I state as follows:

"In cases where an insured person requests a claim for benefit to be antedated, to establish good cause he must show:

"That he was prevented from attending at a local employment office by conditions over which he had no control."

"In this instance the conditions were entirely within the control of the claimant, and he failed to avail himself of the opportunities he had of making claim at the appropriate time.

"Under the circumstances, and in view of the previous decisions already given in similar cases, the appeal of the insurance officer is allowed."

## Case No. CUB-131. (9 October, 1946)

**Held:** That a claimant who, at the time of his being laid off due to shortage of work, was informed of the possibility of a vacancy occurring for a night watchman, and who left his place of residence for two or three days due to the illness of his wife, during which period the position was filled, had not neglected to avail himself of an opportunity of suitable employment.

The material facts of the case are as follows:

Claimant was laid off from his work as a labourer in a factory, owing to shortage of work. At the time of separation there was a possibility of a vacancy occurring at the factory for a night watchman, and he was given the assurance that he would receive the first chance. He went to a nearby city for two days and on his return reported to the factory but found that the job had been filled. The employer stated that he had been called the evening before he left town. The claimant denied this and stated that he had informed the employer of the days he would be absent. The insurance officer considered that the claimant had

neglected to avail himself of an opportunity of suitable employment and disqualified him for a period of six weeks, which decision was unanimously reversed by a court of referees.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was dismissed.

"Under date of September 9, 1946, the claimant submitted a further statement in which he declares that his reason to go to ..... at about the time that the employment was stated to have been offered to him was because his wife was sick in the hospital there. He also states that he never at any time refused work nor is there any evidence to the contrary. He further submits that the statement of Mr. ..... who was to inform him sets out that he did not see the claimant nor did he deliver the message.

"The submissions in this case are of a very contradictory nature. The reasons for the claimant being away from home for two days were evidently on account of the sickness of his wife, who was ill in the hospital ..... This may be good cause for the claimant being away for the temporary period from his home and may have been the reason why he was not in a position to accept this employment of watchman assuming it would have been available for him.

"However, the court of referees in ..... had the opportunity to examine the claimant in person. They stated that he had a good industrial record and evidently were impressed as to his veracity and they came to a unanimous decision in the matter.

"As this appeal is based solely on a question of fact I see no valid reason in this instance for disturbing the unanimous decision of the court of referees and the appeal of the insurance officer is dismissed."

## Case No. CUB-132. (9 October, 1946)

**Held:** That work in a claimant's usual occupation is not suitable if the salary is less than that recognized by good employers, regardless of the period of unemployment.

The material facts of the case are as follows:—

The claimant, a married woman, had been unemployed for approximately 5½ months when she refused to apply for a situation as a delivery driver for a meat market at a wage of \$16 for a 48-hour week, stating that the wages were too low. The prevailing rate of pay in the district was reported to be \$15 to \$20 a week. She had previously worked for three years as a driver for a department store in the same city, at a wage of \$29.60 a week. The insurance officer disqualified her for a period of six weeks on the ground that she had refused to apply for a situation in suitable employment and a court of referees, by a majority decision, upheld this decision.

The claimant appealed to the Umpire.

## DECISION

The appeal was allowed.

"There is no dispute as to the facts of the case. The claimant was employed as a driver receiving a wage of \$29.60 per week plus certain other tangible considerations. She was offered similar employment at a wage slightly more than half of what she was receiving from her last employer.

"Section 31(b) (ii) of the Act states as follows:

"‘ An insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that .....

(b) he has declined . . .

(ii) an offer of employment in his usual occupation at wages lower, or on conditions less favourable, than those observed by agreement between employers and employees or failing any such agreement than those recognized by good employers;'

"The recognized rate of pay for this class of work in the V..... district averages from \$25.00 to \$35.00 per week in accordance with length of service and experience. Therefore, the rate offered of \$16.00 per week was not the recognized rate of pay for this class of work or the rate observed by agreement between employers and employees. Had the claimant been offered employment at work other than that of her usual occupation, she would have been expected to accept such occupation in accordance with section 31(b) (iii), as she had already been unemployed for a considerable length of time. However, in this instance she was offered employment at her usual occupation and at a rate of pay obviously not recognized by good employers in the district.

"Under the circumstances, the appeal is allowed."

## Case No. CUB-133. (9 October, 1946)

*Held:* That a claimant who had interviewed a prospective employer who had a suitable and permanent position available for the claimant had without good cause failed to accept the employment by advising the employer that she would hold the position only temporarily pending her removal from the area.

The material facts of the case are as follows:

The claimant, a married woman, had been unemployed for nearly three months when she was notified by the local office of a permanent situation in her usual occupation at wages higher than the prevailing district rate. She interviewed the prospective employer, who would not engage her on a temporary basis when she informed him that she expected to go to her parents' home at a distant point, owing to the illness of her mother. A court of referees reversed the decision of the insurance officer, who had disqualified her for a period of six weeks for failing to accept the situation.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, it is evident that the position offered at the ..... Store was suitable, and that the wages

offered were slightly in excess of the prevailing rate for that type of work in the district.

"In this finding of the court of referees: 'The employer was not prepared to hire her on a temporary basis in that way and the position was, in point of fact, actually not available to her.' it seems to me that the real situation is actually reversed. The employment was available to the claimant, but the claimant was not available for the employment offered; she had made stipulations whereby she had placed herself in the position where she was not available to accept the employment as offered to her.

"As for the statement made by the claimant that she wished to go back to ..... on account of her mother being taken ill, I think that in a matter of this character, it would be desirable if support were given to such a statement by the submission of proper documents. In this instance, there is no proof to indicate that the mother of the claimant was seriously ill nor was there anything to indicate that the presence of the claimant was requested by anyone in .....

"Under the circumstances, the appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the time that this decision is communicated to her."

#### **Case No. CUB-134. (9 October, 1946)**

**Held:** That where misconduct is given as the cause for separation from employment the misconduct must be proven by the parties who make the allegation. Misconduct cannot be assumed, it must be conclusively proven before disqualification is imposed.

The material facts of the case are as follows:

The claimant was employed as a sales clerk for approximately eight months, and on making claim for benefit, stated that she had lost her employment because reports were made to the management that she had not wanted to serve customers. The employer stated that her services were no longer satisfactory. The insurance officer disqualified her for a period of three weeks on the ground that her conduct was such that her employer was compelled to discharge her, which is tantamount to voluntarily leaving, the reduction in the period of disqualification being due to the fact that it was alleged she had been warned only once. The claimant appeared before a court of referees and denied the allegation of her former employer, contending that the manager of another department had reported her, that she had not been warned, and that the manager of her own department had spoken on her behalf when she was called to the office to receive her notice of separation. The court unanimously upheld the decision of the insurance officer.

The claimant, with the permission of the chairman, appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, I cannot accept the statement of the insurance officer that separation from employment

under the circumstances was tantamount to having voluntarily left employment. The claimant was discharged because in the opinion of some person or persons she had been guilty of what could be termed industrial misconduct.

"In several previous decisions dealing with similar questions, I have ruled that where misconduct is given as a cause for separation from employment such misconduct must be proved by the parties who make the allegation. Misconduct cannot be assumed, it must be conclusively proven before a claimant can be disqualified from receipt of benefit.

"In the present instance no proof has been submitted either by the former employer of the claimant or by any other party to the proceedings to this effect; under the circumstances the appeal of the claimant is allowed and the disqualification imposed by the insurance officer is removed.

"However, it must be pointed out that claimant received one week's pay in lieu of notice terminating on the 15th day of June, 1946. As the claimant cannot be deemed to be unemployed during the period for which she received payment, this factor should be taken into consideration when benefit is being paid to her."

#### **Case No. CUB-135. (9 October, 1946)**

**Held:** That a claimant who is in subsidiary employment and receives a bulk sum to cover services and office accommodation is entitled to deduct the cost of the accommodation before calculating his personal remuneration.

The material facts of the case are as follows:

The claimant was employed as a bookkeeper to 24 November, 1946, and made claim for benefit on 20 December next, stating that he was still employed as secretary-treasurer of a school board at a weekly salary of \$7.00, working one hour each evening. He had held this employment while working in his last position. His claim was disallowed because he had not proved that he was unemployed.

On appeal, the claimant explained that his remuneration as secretary-treasurer was:

Salary, per annum .....	\$290.00
Rent of one room in his residence, for use as an office, per annum .....	130.00
Total remuneration .....	\$420.00

A court of referees disallowed the appeal, and the claimant appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions made, the appeal of the claimant and his entitlement to benefit rest on the question as to whether he was earning less than \$1.00 per day. In their decision, the court of referees have regarded the \$420.00 received by the claimant entirely as

money earned, and so have regarded the amount charged for office rental as being in the same category.

"In the submission before me, (Exhibit 6) there is a communication from ..... chairman of the school board, as follows:

"The claimant receives a salary of \$420.00 a year payable just when he wants to take it out of the funds. He deducts \$2.50 a week for an office which is in his own home and I think he is very cheap at that price."

"From this communication it is evident that the amount of \$2.50 per week should be regarded as rental for space supplied by the claimant, and, therefore, should not be considered as wages received by the claimant. Such being the case, the claimant's earnings as secretary-treasurer of the school board would then amount to \$290.00 per year, which brings him well within the limit a person is allowed to earn when employed in subsidiary employment, in accordance with Section 33(b) of the Unemployment Insurance Act.

"Having established this fact and also that this is employment that could be followed by the claimant outside of his ordinary working hours, he is deemed to be unemployed for the purpose of entitlement to benefit.

"Under the circumstances, the appeal is allowed."

#### **Case No. CUB-136. (9 October, 1946)**

**Held:** That a married woman (separated) may, after being on benefit for five months, be referred to suitable employment outside of her home district, and a refusal to apply justifies a disqualification.

The material facts of the case are as follows:

The claimant, aged 46 years, separated from her husband, reported having been employed as a manageress of a candy company at a weekly salary of \$40, from September 1934 to September 11, 1945, when she left her employment because of ill health. Her claim for benefit, made on January 24, 1946, was allowed. On June 28, 1946, the local office notified the claimant of a situation in permanent employment similar to that which she had last held. The situation was in the town of H....., about 90 miles from her home, and the salary was \$110 per month, with prevailing rate at from \$90 to \$100 per month. The claimant refused to apply for this situation because she owned her own home and had a son, a daughter and a roomer living with her.

The insurance officer disqualified her from receipt of benefit for a period of six weeks for having refused, without good cause, to apply for a situation in suitable employment. A court of referees allowed her appeal, considering that since a married daughter was staying with her temporarily, and an adult son was living with her while attending a university, and that since there was no evidence that housing accommodation was available in H....., the claimant should not be forced to leave S..... at this time.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The following statements made by the claimant before the court of referees are of particular interest.

"I am supposed to be paid benefits until next January, unless they can offer me a job, it is not reasonable to accept that type of work or to leave my home.'

"I am better off taking employment in the city than going out of town. I am certainly available for anything they can offer me in the city. I have not been offered any employment in the city.'

"The court of referees, after having heard the evidence of the insurance officer and the claimant, reversed the decision of the insurance officer and allowed benefit to be paid to claimant. In their decision they state in part as follows:

"From the date she filed her claim until the present time this was the only position notified to her by the local office at S....., either on the standard of position in which she had been employed, or of a lesser standard.'

"During the time she was employed with ..... she raised her two children and kept her home together in the City of S..... Although the daughter who was married recently has taken up residence in the United States, she is presently living with her mother in S....., and the son, who is returned from the services, will continue to do so at least until his university course has been completed.'

"This court is fully aware of the housing conditions existing throughout Canada, and in all towns and cities in the Province of S..... There is no evidence of any kind that any room or housing accommodation would be available to the claimant in the town of H....., and it therefore seems to us that it would be unfair and unjust to compel the claimant to leave her home in S..... to go to H..... where in all likelihood she would be unable to secure living accommodation.'

"From this decision of the court of referees, the insurance officer has appealed to me on the following grounds:

"That the court of referees erred in allowing the claimant's appeal merely on the assumption that living quarters would not be available in the Town of H..... There was no attempt made by the claimant to contact the employer who had the vacancy in his business, in order to find out if living quarters were available, nor did she contact any other agency in the Town of H..... who would have been able to advise her as to the scarcity or the availability of living quarters.'

"The claimant filed her claim on the 24th January, 1946, and has been drawing benefits for approximately five months. No mention was made that the employment offered was not suitable, and after an unemployment period of approximately five months, suitable employment at a distance from home should not have been refused by the claimant. (Section 43 (b) (1) of the Unemployment Insurance Act)."

"I have considered the facts and submissions of the case very carefully.

"In regards to the domestic circumstances of the claimant, it appears that the claimant's daughter was a married woman residing with her husband in the United States and only visiting her mother. The son was a grown-up young man recently released from the armed services and was attending the University of S..... It can reasonably be assumed that both the son and daughter were capable of taking care of themselves.

"Insured persons, who are in receipt of continuous benefit for the length of time that claimant was, must show by their actions that they are genuinely seeking work and unable to obtain same. In the present instance, according to the evidence quoted above, the claimant is under the impression that she has no obligation in the matter but depends upon the employment office to offer her employment and states further that she considered herself entitled to benefit until January of 1947.

"Insured persons are entitled to benefit only so long as they comply with the intent and provisions of the Act. In this instance, the claimant was offered a position in the city of H....., at a salary which was reasonable and slightly in excess of that which was paid for the same type of labour in the district in which she was asked to go. She refused same on two grounds, first, that she did not wish to leave the city and, secondly, on account of domestic circumstances. The claimant had already been unemployed for a considerable length of time and in receipt of benefit for a period of five months. Under these circumstances, it was not unreasonable to have offered her employment outside of the city and such employment must be regarded as being suitable. The domestic circumstances of the claimant were not of such a nature that she could not have accepted the position, even though it was outside of the city of S.....

"In my opinion the claimant has without good cause refused an offer of suitable employment, and the appeal of the insurance officer is allowed; the disqualification of six weeks, originally imposed by the insurance officer, is restored as from the date that this decision is communicated to claimant."

#### **Case No. CUB-137. (9 October, 1946)**

**Held:** That a claimant, laid off due to a work shortage and subsequently reinstated by his employer with a retroactive effect to the date of his separation, cannot be deemed to have been unemployed during this period.

The material facts of the case are as follows:

The claimant was employed as an office clerk from 1944 to 16th January, 1946, when he was laid off on account of work shortage. A claim for benefit made on 17th January was allowed.

Several weeks later the claimant learned that his late employer had replaced him with another man. He complained to his union, was re-instated in his former position as from 17th January, and paid by his employer from that date. At the insistence of the employer, the claimant paid to the Unemployment Insurance Commission the moneys which he had received as benefit, \$77.52.

The insurance officer thereupon re-adjudicated and disallowed the claim as of January 17, 1946, as the claimant had not proved that he

was unemployed. The claimant appealed, stating that the money received from his employer for the period during which he did not work was compensation for wrongful dismissal. A court of referees sustained the decision of the insurance officer.

The claimant appealed to the Umpire with permission of the chairman of the court.

## DECISION

The appeal was dismissed.

"If the claimant's contention were upheld, he would have received his wages during that period in which he claims he was unemployed; in addition he would also have received unemployment insurance benefits. This obviously would be contrary to the intent and provisions of the Act, and against all principles of fairness and equity."

"The claimant states that the moneys received from his employer should be regarded as compensation for wrongful dismissal. This contention is in no way supported either in law or in fact and is a mere afterthought which cannot be seriously considered."

"The claimant in his submissions makes the following statement, under date of September 7, 1946:

"Owing to the efforts of the union, I was re-instated in my employment with full pay back to the date of my dismissal."

"From his statement, the claimant himself regarded the moneys received as back pay and not as damages for the time that he had been unemployed."

"I am in accord with the statements made in the unanimous decision given by the court of referees and see no valid reasons for changing it."

"It must be added that, when the employer re-instated the claimant, he did so with a retroactive effect to the date of his separation from employment, namely the 16th of January, 1946. As a result of this retroactivity, the claimant cannot now be deemed to have ever been unemployed."

"Moreover section 64 of the Act reads as follows:

"An insurance officer, a court of referees or the Umpire, on new facts being brought to his or their knowledge, may rescind or amend a decision given in any particular claim for benefit."

"Accordingly, when the NEW FACT that the claimant had been re-instated with a retroactive effect to the date of his alleged separation became known, it was the duty of the insurance officer and of the Unemployment Insurance Commission, to rescind any former decision which would have the effect, in view of this new fact, to allow the claimant to pocket an amount of money to which he is in no way entitled."

"Under the circumstances the appeal by the claimant is dismissed."

## Case No. CUB-138. (9 October, 1946)

**Held:** That it is the duty of an insured person, immediately upon separation from employment, to call at a local office to ascertain his position in regard to his benefit rights. Negligence on the part of an insured person or ignorance of the provisions of the Act cannot be accepted as a valid reason for not filing a claim.

The material facts of the case are as follows:

The claimant was employed as a car inspector by a railroad company from October 1, 1945 to January 7, 1946 and on making claim for benefit on March 28, 1946, he reported that he had been laid off due to shortage of work. The employer informed the local office that he had been unable to meet the required medical standards. The claimant requested that his claim be antedated to January 8, 1946, giving as his reasons for delay in making claim that he had been trying to become re-employed by the railroad company. The claim was allowed as of the date on which it was made, the request for antedating being not approved by the insurance officer. The claimant appealed to a court of referees, which approved the antedating.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"It is evident from submissions made that the claimant did not put in his application because he hoped to be re-employed by his former employer. It would have been an easy matter for the claimant to have called at the local office of the Commission, and there obtained full information as to his position in regards to his benefit rights. It is the duty of an insured person immediately upon separation from employment to call at a local office of the Commission to ascertain his position in regards to his benefit rights.

"In the case of ..... C.U.B. 116, under date of the 25th day of July, 1946, I have laid down the following rule as being applicable to cases where antedating of claims is requested:

"'In cases where an insured person requests a claim for benefit to be antedated, to establish "good cause" he must show: that he was prevented from attending at a local employment office by conditions over which he had no control.'

"In several previous decisions (C.U.B.50) (C.U.B.52) (C.U.B.82) (C.U.B.99) (C.U.B. 130) I have also stated that negligence on the part of an insured person or ignorance of the provisions of the Act could not be accepted as a valid reason for non-compliance.

"Therefore the appeal of the insurance officer is upheld."

#### Case No. CUB-139. (9 October, 1946)

*Held:* That a claimant, unemployed for six months, who refused to apply for suitable employment in his registered occupation in a city 180 miles distant, had refused without good cause, his domestic circumstances not being of such a nature as to prevent him from accepting.

The material facts of the case are as follows:

The claimant, a single man with a dependent mother, was employed as a linotypist for fourteen years at 80 cents an hour. He became separated from his employment on July 12, 1945 and his claim for benefit, made on November 5, 1945, was allowed. On January 8, 1946 he refused to apply for employment in his usual occupation in a larger

city located 180 miles from the city where he resided. The rate of pay was \$30 to \$35 for a 48-hour week, which was the prevailing rate for the district. He was disqualified by the insurance officer for a period of six weeks on the ground that he had refused without good cause to apply for a situation in suitable employment. He appealed to a court of referees and submitted that it was necessary for him to give between 50 per cent and 55 per cent of his salary to his family and that he could not possibly live away from home on his earnings. The court of referees upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The facts of the case indicate that the claimant had been unemployed for some length of time and that he was unable to obtain employment in the City of Q..... Where a person has been unemployed for such a length of time and suitable employment is offered to him in another area, the provisions of the Act are such that he ought to accept such employment, when offered to him, even if it is not in his home district.

"In this instance the claimant, from the commencement of his unemployment has expressed strong objection to leaving the City of Q..... In his statement, as shown in Exhibit 3, under date of January 9, 1946 the claimant definitely declares that he would not leave for any consideration to work outside the City of Q....., and this appears to have been the real reason for his refusal. The work offered was at the accepted rate of pay in the district for this class of labour and, therefore, was suitable employment. As to the domestic circumstances of the claimant, he has not shown that they were of such a nature as to prevent him from accepting the employment offered.

"Under the circumstances, I see no good reason for disturbing the decision given by the court of referees and the appeal of the claimant is dismissed."

## Case No. CUB-140. (9 October, 1946)

**Held:** That a claimant must have been totally incapacitated for work of any type before an extension of the two-year period can be granted for incapacity.

The material facts of the case are as follows:

The claimant became separated from his employment due to ill health and, on making claim for benefit approximately two years later, he applied for extension of the two-year period on the ground that he had been incapacitated for work during the period applied for, producing two medical certificates in an attempt to uphold his contention. The insurance officer granted the extension but the claim was disallowed because the claimant still did not have sufficient contributions to his credit to establish his first benefit year. The court of referees granted the extension, accepting the medical certificates as evidence of incapacity for a longer period than that allowed by the insurance officer.

The insurance officer appealed to the Umpire.

## DECISION

The extension of the two-year period was not granted.

"After making a careful examination of the facts and submissions in this case in relation to Section 29 of the Act, already referred to, it is my duty in the first instance to determine if the claimant was:

"'incapacitated for work by reason of some specific disease or bodily or mental disablement, or employed in any excepted employment.'

"According to the medical certificate dated March 4, 1943, it is stated:

"'This man ..... is affected with Chronic Asthma. I have had him under treatment for some time. It is impossible for him to continue at factory work (he is 60 years of age). I strongly recommend that he be given permit to go back to his farm where he will do better.'

(Signed) ..... M.D.'

"In the second medical certificate dated April 17, 1946, and signed by the same doctor, it is stated as follows:

"'this man has a marked Dupuytren's contracture of the Palmar Fuscia of the right hand. He is quite unable to perform any heavy labour, but I am sure he can do light work, such as a watchman's or janitor's job.'

"In the first of these two certificates, it is not claimed that the man was incapacitated for work and the inference is obvious that the claimant was in a position to perform certain light duties.

"This view is definitely stated in certificate of date April 17, 1946, when, on return of claimant from the farm (assuming he was on a farm) to an industrial area, the doctor declares that he is sure that the claimant can do light work such as a watchman's or janitor's job.

"However the claimant in a further statement of date September 21, 1946 declares that he was not able to perform any kind of work during the period from January, 1944 until the date of his claim.

"No proof is submitted to substantiate this statement nor is this contention borne out by the doctor's certificate of date April 17, 1946.

"If a claimant desires to obtain the benefit of Section 29 of the Act, he must be incapacitated for work or in other words, he must be in a position where he is unable to follow any kind of employment. In this instance, it would appear that the claimant was during the period in question not in a position to follow certain types of employment only, and not incapacitated for work within the meaning of the Act. Therefore, he is not entitled to the benefit of Section 29(2) of the Act. In view of my conclusions in this respect, it is not necessary for me to express an opinion as to whether the extension should be dated back to the dates mentioned by the court of referees and the appeal of the insurance officer on the grounds mentioned is allowed."

#### Case No. CUB-141. (24 October, 1946)

**Held:** That short, temporary cessations of work by the majority of employees, in connection with negotiations for the renewal of a collective bargaining agreement, followed by discharge from employment after warnings by the employer, constitute a work stoppage caused by a labour dispute.

The material facts of the case are as follows:

The claimant became separated from his employment, along with 122 other employees, because of an alleged dispute between the employer and the employees. He was a member of a union which had been negotiating with the employer in connection with the renewal of its collective bargaining agreement, which was to expire in March 1946. The employer refused to approve of the demands of the union and on February 18, 1946, in protest, the employees stopped work for one hour, remaining on the premises of the employer, after which the employer posted the following notice:

**"NOTICE TO EVERY EMPLOYEE PAID ON AN HOURLY BASIS**

"We warn you that according to existing labour acts, you are participating in an illegal strike and are liable to penalties. Our present agreement with Local 510 specifies strictly: 'There will be no strike for the duration of the agreement.'

"Take notice that, in case of another sit-down strike, slow-down strike or any other interruption of operations, our intention is to dismiss immediately every participant.

" (Signed) .....  
"Manager of Operations,"

Negotiations were resumed and, when no agreement was reached, the employees, on instructions of the union, ceased work for one hour on the morning of February 26. That afternoon, when the operation of the plant was again interrupted in the same way, the employer posted a notice warning the men that they would be dismissed if they did not return to work within 20 minutes. The employees did not heed the warning and consequently were dismissed, bringing about a stoppage of work.

This claim for benefit was disallowed by the insurance officer under Section 43(a) of the Act, and the court of referees upheld his decision.

The union, on behalf of the claimant, appealed to the Umpire, contending that disqualification should have been made under the subsection of the Act which deals with misconduct.

## DECISION

The appeal was dismissed.

"It is suggested that the claimant lost his employment due to his own misconduct and not by reason of a stoppage of work which was due to a labour dispute. The question therefore for me to consider is what was the real reason for separation. Was it the result of misconduct or the result of a labour dispute? If it is the result of a labour dispute, section 43(a) applies. There is no doubt that a labour dispute existed. Negotiations were in progress between the company and its employees which had not reached a definite conclusion. This is admitted by all parties concerned.

"The question of the notice posted at 2.40 p.m. on February 26, giving the employees 20 minutes to return to their employment, is not really the main issue, it is but incidental to the already existing labour dispute. This dispute had caused previous protest stoppages of work of

short duration. These admissions having been made by all parties to the issue, there is no valid reason for me to disturb the unanimous decision reached by the court of referees imposing disqualification under Section 43(a) (i) (ii) of the Act."

### **Case No. CUB-143. (24 October, 1946)**

**Held:** That a single woman who accepts employment away from her home city and subsequently leaves this employment because her living expenses were too high to permit of her sending money home to assist in the support of her mother, has not shown just cause for voluntarily leaving her employment.

The material facts of the case are as follows:

The claimant, a single woman, left her employment as an assistant hairdresser in the city of M....., where she had been working for two months at a salary of \$15 a week, in order to return to her home in the city of Q..... She made claim for benefit and stated that she had been unable to maintain herself in M..... and to send money home to help her mother. The insurance officer disqualified the claimant for a period of six weeks on the ground that she had voluntarily left her employment without just cause. She appealed to a court of referees, before which she appeared, and the court unanimously confirmed the decision of the insurance officer but reduced the period of disqualification to three weeks.

With the permission of the chairman, the claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"It appears that the claimant left the City of Q..... to go to M..... in the hope of improving her knowledge of the trade she was following, and then suddenly of her own accord, voluntarily left her employment and returned to the City of Q..... The insurance officer disqualified the claimant for a period of six weeks and the court of referees in the City of Q..... reduced this disqualification to one of three weeks. There is no point of law involved in the case, it is a question of fact only which no doubt was carefully considered by the court of referees who arrived at a unanimous decision.

"I see no valid reason for disturbing their decision and under the circumstances dismiss the appeal."

### **Case No. CUB-144. (2 November, 1946)**

**Held:** That the settlement of a labour dispute does not imply that the stoppage of work due to the labour dispute had ceased. Disqualification continues in effect up to the date on which a reasonable resumption of work takes place.

The material facts of the case are as follows:

The claimant lost his employment with a large steel mill by reason of a stoppage of work due to a labour dispute. The shut-down was in existence almost three months before a settlement of the dispute was reached on October 3. He made claim for benefit on October 7, which

was disallowed by the insurance officer and a disqualification was imposed on the ground that the actual stoppage of work had not terminated when the claim was filed. Various difficulties had been brought about by the prolonged stoppage, as well as the terms of settlement, which the company claimed made immediate re-employment impossible. The question at issue was whether the work stoppage ceased when settlement was reached or on the date on which a general resumption of work took place. The court of referees reversed the decision of the insurance officer, being of the opinion that the stoppage of work caused by the labour dispute had terminated on the day settlement was made, and that the continuing stoppage was due to other causes.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"I have carefully considered the arguments that were given before me in person on October 28, both by ......., the Chief Reviewing Officer of the Unemployment Insurance Commission, and by ......., counsel of the union. I have, also, carefully examined the exhibits and submissions placed before me.

"The Section of the Act which applies in this case, namely 39(1) of the Amended Act of 1946, states as follows:

"'An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory..... but this disqualification shall last only so long as the stoppage of work continues.'

"The Section of the Act referred to is in no way ambiguous. It very definitely implies that an insured person who has lost his employment by reason of a labour dispute shall be disqualified from receipt of benefit so long as the stoppage of work continues. When a plant has been closed down by reason of a labour dispute, it is generally the case that some time must elapse before there can be a reasonable resumption of operations at such premises. This is particularly so in the case of a steel mill where there must be a necessary lapse of time before the blast furnaces can again be put into operation so as to allow a resumption of work.

"It will be generally agreed that the settlement of a labour dispute does not imply that the stoppage of work due to same has ceased. The two terms are in no way synonymous.

"Further no hard and fast rule can be laid down under the Act as to when a stoppage of work ceased to exist as the result of a labour dispute. Each case will have to be determined on its merits. In some instances a reasonable resumption of operations might be possible immediately after a settlement of a labour dispute. In other instances there may have to be a certain lapse of time before a reasonable resumption can take place.

"From the arguments advanced and the submissions and facts before me, I have come to the conclusion that October 15, 1946, is the day on which there was a reasonable resumption of operations and for the purposes of the Unemployment Insurance Act the stoppage of work ceased on this day.

"Under the circumstances, I consider the court of referees erred in their decision when they decided that the stoppage of work had ceased on the day the settlement of the strike took place, namely October 3, 1946.

"My decision, therefore, is that the stoppage of work within the meaning of the Act, ceased at midnight on the 14th day of October, 1946.

"The appeal of the insurance officer is allowed."

#### **Case No. CUB-146. (21 November, 1946)**

**Held:** That an insured person who resigned his position rather than work to the date on which his employer had notified him that his employment would end, was properly disqualified for having voluntarily left his employment without just cause. The period of disqualification was for the actual number of days of employment so lost.

The material facts of the case are as follows:

The claimant was employed as an assistant secretary by a professional association and became separated on May 25, 1946. On making claim for benefit he reported that he had resigned on that date, following a disagreement with his employers. The latter informed the local office that the claimant had resigned after having been notified of their intention to dismiss him as of June 17, 1946. The insurance officer disqualified him for a period of twenty-three days from May 26 until June 17, 1946, on the ground that he had voluntarily left his employment without just cause, this being the actual period during which he was voluntarily unemployed. The court of referees, by a majority decision, upheld this decision.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From the facts and the tone of the submissions before me it is evident that there was a considerable amount of friction between the claimant and his employers. On account of this, the claimant had made up his mind to leave his employment. Efforts were made to adjust matters and with this object in view a meeting was held; the claimant was invited to attend this meeting but he failed to avail himself of the opportunity.

"The case is one of fact only; there is no point of law involved. The court of referees had the opportunity of hearing the claimant in person; they upheld by a majority decision the disqualification of 23 days imposed by the insurance officer.

"For these reasons, I consider that the decision of the court of referees was justified and I dismiss the appeal."

#### **Case No. CUB-147. (21 November, 1946)**

**Held:** That an insured person who had been hired at an hourly rate of pay and who was later asked to work at a piece-work rate, had not just cause for voluntarily leaving her employment on that account, since the employer did not insist that she either work at piece-work rate or resign.

The material facts of the case are as follows:

The claimant had been employed for nine months as a machine operator in a shoe factory and, on making claim for benefit, stated that difficulties regarding her work had arisen between herself and the fore-woman and, as there appeared to be no possibility of arriving at an understanding, she had resigned. She was disqualified by the insurance officer for a period of six weeks on the ground that she had voluntarily left her employment without just cause. In her submission to a court of referees the claimant stated that she had been hired at an hourly wage but had been requested to do piece-work. When she appeared before the court, however, she admitted that although she had been requested to change to piece-work, no action was taken to compel her to do so. The court, by a majority decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me, it appears that the claimant who had been working at the ..... Shoe factory for a period of approximately nine months did not get along very well with the fore-woman of the factory. Because of certain disagreements the claimant voluntarily left her employment. This is confirmed by the separation notice of the employer. The court of referees, which considered the case, had the opportunity of examining the claimant in person, and went carefully into all the facts of the case. Whilst their decision was not unanimous, there is nothing in the submissions to me or in the facts placed before the court of referees that would warrant my interfering with the decision arrived at.

"Under the circumstances, the appeal of the claimant is dismissed."

## Case No. CUB-149. (21 November, 1946)

*Held:* That a claimant's intention to establish himself in business on his own account did not justify leaving his employment voluntarily. While engaged in preparing to establish his own business he is not available for employment nor is he unemployed.

The material facts of the case are as follows:

The claimant made claim for benefit and reported that he had voluntarily left his employment as a press operator in heavy industry on July 10, 1946, because he intended to establish himself in business, that it would take a few weeks to get his equipment ready, and that, in the meantime, he was looking for suitable work. The insurance officer disqualified him for a period of six weeks on the ground that he had voluntarily left his employment without just cause. The claimant stated in his submission to a court of referees that the equipment which had been promised him before he left his employment would not be available for a few weeks and that he had applied for part-time work but none was available. He stated further that he had separated from his employment before his equipment was ready because he was working

nine and one-half hours a day and it was impossible for him to prepare for his new venture outside his working hours involving, as it did, several trips to another city regarding a machine. The court of referees allowed the appeal.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me it is evident that the claimant voluntarily left his employment in order to enter business on his own accord. In doing so it was essential for him to make all the necessary arrangements that are required before anyone can commence business. The length of time that was taken by the claimant to become established in his business is not a factor in considering the case as it is shown in the evidence before me that he left his employment on the 10th day of July and two days later made application for benefit. Therefore it is evident that when he voluntarily left his employment, it was his intention to make claim for benefit.

"Further, it might be pointed out that during the period in which he was claiming benefit the claimant was not actually unemployed as he was engaged on his own account looking after the necessary arrangements to start his new business. This is admitted by the fact that the claimant was not in a position to accept employment had it been offered to him.

"In view of these facts I cannot help but come to the conclusion that the claimant had voluntarily left his employment and was not available for work. Therefore he is not entitled to benefit within the provisions of the Act and the unanimous decision of the court of referees was obviously wrong in fact and in law.

"Under the circumstances the appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him."

## Case No. CUB-150. (21 November, 1946)

**Held:** That an insured person who has lost his employment by reason of a work stoppage caused by a labour dispute is subject to disqualification if he is directly interested in the outcome of the dispute, even though he may belong to a union which has not taken an active part in the dispute.

The material facts of the case are as follows:

The claimant was employed as a shift engineer with a lumber company when he lost his employment by reason of a work stoppage due to a labour dispute. He filed a claim for benefit and the insurance officer imposed disqualification for as long as the stoppage of work continued. The claimant appealed to a court of referees and submitted that he did not belong to the union involved in the strike, that he belonged to another union, and that he considered himself laid off work. The court of referees by a majority decision upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts before me and the submissions made, it is apparent that the claimant was not a member of the organization which called the strike.

"The question, however, to be considered is whether the claimant was an interested party to the dispute. In his submission he admits as follows:

"I benefited in matters of wages and hours as a result of the strike.'

"This admission by the claimant brings him within the classification which would designate him as an interested party. Furthermore in the master agreement agreed upon between the company and the [union] it is stated on page 1 as follows:

"The company recognizes the union as the sole collective bargaining agency of the employees of the company.'

"Such being the case it is evident that the union in negotiating with the company was acting on behalf of the claimant even though it may have been done without his consent. Nevertheless this fact makes the claimant an interested party to the dispute.

"In previous similar cases CU.-B. 85, CU.-B. 86, and CU.-B. 87, having gone more fully into the reasons for arriving at my conclusions, I do not feel that it is necessary to elaborate in this particular case.

"Under the circumstances I have no alternative but to uphold the decision given by the court of referees and dismiss the appeal."

## Case No. CUB-152. (21 November, 1946)

*Held:* That the fact that a claimant would have lost his temporary employment before the cessation of the work stoppage caused by a labour dispute, did not relieve him of disqualification for so long as the stoppage continued.

The material facts of the case are as follows:

The claimant was hired for a period of 12 weeks in order to relieve other employees during the holiday season, and lost his employment by reason of a stoppage of work due to a labour dispute. He made claim for benefit, which was disallowed, and the insurance officer disqualified him for so long as the stoppage of work continued. The court of referees upheld the decision of the insurance officer but reduced the period of disqualification to two weeks, because of the fact that his employment would have lasted for only two weeks longer had there been no stoppage of work.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the evidence produced in this case, it is apparent that the claimant was temporarily employed by the ..... and that his employment had terminated as a result of a labour dispute at the factory.

It is admitted that he was not a member of the union and that he was not participating in or financing the dispute. The question, therefore, is as to whether the claimant had a personal interest in the dispute. From the submissions made, it would appear that he was directly affected by the dispute as his terms of employment would have been controlled by any agreement arrived at between the company and the union. This is the basis of the unanimous decision given by the court of referees. Such being the case, the disqualification imposed must be in accordance with the terms of the Act which are clearly set out in Section 43(a):

- “An insured person shall be disqualified for receiving benefit—  
 (a) if he has lost his employment by reason of a stoppage of work due to a labour dispute ..... but this disqualification shall last only so long as the stoppage of work continues . . .”

“There is no power vested in either the court of referees or the Umpire to vary this disqualification. It can neither be reduced nor increased and as the court of referees found the claimant had lost his employment by reason of a labour dispute in which he was an interested party, the disqualification imposed must automatically follow the terms referred to in the Act. Therefore, the appeal of the insurance officer is allowed.”

#### **Case No. CUB-154. (21 November, 1946)**

**Held:** That a claimant who is directly interested in a labour dispute, which caused a stoppage of work at the plant where he was employed, lost his employment because of such stoppage of work although he was absent from work on sick leave at the time the stoppage occurred. (CUB-85, CUB-86 and CUB-87 referred to.)

The material facts of the case are as follows:

The claimant made a renewal claim for benefit on September 4, 1946. His employer stated that he had been on sick leave since June 9, that he had reported for work on August 31, and would resume work as soon as the strike, which was then in progress at the plant, was finished. The claimant was disqualified as he had lost his employment by reason of a work stoppage caused by a labour dispute. Appealing to a court of referees, he stated that he had received sick benefits from June 9 to September 5, and that the work stoppage commenced after June 9. The court dismissed the appeal.

The union appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

“From this submission it is claimed that claimant was ill at the time the strike was called, and, therefore did not participate in the calling of ‘nor took action during the time of the strike.’ The question for me to decide is whether the claimant comes within disqualifications as set out in Section 43(a) of the Act which states:

- “An insured person shall be disqualified from receiving benefit  
 (a) if he has lost his employment by reason of a stoppage of work

which was due to a labour dispute at the factory, workshop or other premises at which he was employed..... but this disqualification shall last only so long as the stoppage of work continues, and shall not apply in any case in which the insured person proves

(i) that he is not participating in or financing or directly interested in the labour dispute which caused the stoppage of work. . . '

"It is probably due to his illness that the claimant was not an active participant in the strike. The question, therefore, to be considered is whether the claimant was an interested party to the dispute. There is no doubt that, at the time of his filing his application for benefit, he still regarded himself as an employee of the ..... as he was in receipt of certain sickness benefit payments from the company. The claimant is also a member of the union which was a party to the dispute and, therefore, was directly interested in the outcome of the strike at the plant.

"In previous similar cases CUB-85, and CUB 86, and CUB-87, having gone more fully into the reasons for arriving at my conclusions, I do not feel that it is necessary to elaborate in this particular case.

"Under the circumstances the unanimous decision arrived at by the court of referees was in accordance with the facts of the case and also in accordance with the meaning of the Act.

"The appeal is dismissed."

#### **Case No. CUB-156. (21 November, 1946)**

**Held:** That an insured person who has lost his employment because of a work stoppage due to a labour dispute in which he is directly interested, is not relieved of disqualification because he is unable to obtain the tools of his trade which are locked in the struck plant. (CUB-85, 86 and 87 referred to.)

The material facts of the case are as follows:

The claimant, a maintenance mechanic, became separated from his employment on July 8, 1946, due to a stoppage of work caused by a labour dispute. He made claim for benefit on July 16, 1946 and was disqualified by the insurance officer for so long as the stoppage of work continued. He appealed to a court of referees on the ground that he did not belong to any union and that he would not gain in any way if the union's demands were acceded to. The court unanimously allowed the claim, being of the opinion that the claimant was prevented from seeking employment in his usual occupation because he was unable to enter the plant to pick up his tools.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the evidence submitted there is no dispute as to the facts of the case. A strike was called on the morning on the 9th of July, by the ..... Union, Local..... Their object was to obtain an increase of 25 cents per hour, a 40 hour week, and improved vacation periods together with a union contract. The proposed changes in work-

ing conditions were of such a nature that the claimant was directly interested even though he was not a member of the union.

"The court of referees allow benefit to claimant on the grounds that he was unable to enter the premises to obtain his tools and thereby obtain employment. In reference to this, there is no submission of any kind to indicate that the claimant was offered employment, and unable to accept it on account of lack of tools. But even if such was the case it does not alter the basic facts. The strike occurred on the 9th of July and on the 16th day of July the claimant made application for benefit. It is significant that in his submission of date July 26, the claimant makes no reference to his inability to obtain employment because of lack of tools. Had the claimant intentions of seeking new employment when the strike occurred on the 8th of July, there was nothing that could have hindered him from taking his tools away with him. From this fact the conclusion to be drawn is that he still regarded himself as an employee of the company temporarily unemployed due to a dispute at the factory at which he was employed.

"The question of the tools being left at his place of employment is not the important factor in the case; what really has to be considered is the cause of separation of the claimant from his employment. There is no doubt that he lost his employment by reason of a stoppage of work, due to a labour dispute at the factory where he was employed and that he was an interested party to this dispute. Therefore, he comes within the disqualifications as imposed under Section 43 of the Act.

"In previous similar cases CU.-B. 85, CU.-B. 86, and CU.-B. 87, having gone more fully into the reasons for arriving at my conclusions, I do not feel that it is necessary to elaborate in this particular case.

"The appeal of the insurance officer is allowed."

#### **Case No. CUB-157. (21 November, 1946)**

**Held:** That voluntary separation in anticipation of a work stoppage caused by a labour dispute did not relieve a claimant of disqualification for so long as the stoppage continued.

The material facts of the case are as follows:

The claimant, knowing that a stoppage of work would occur as a result of a labour dispute between the employer and a union of which the claimant was not a member, notified his employer of his intention to leave one week later. The date of separation coincided with the date of commencement of the stoppage of work. He made claim for benefit the day after the stoppage occurred. The insurance officer disallowed the claim and disqualified him so long as the stoppage of work continued. The court of referees was of the opinion that the case was one of voluntary leaving without just cause but, in view of the extenuating circumstances, a disqualification for a period of only three weeks was imposed.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions made the question for me to decide is whether the claimant voluntarily left his employment or

whether he left his employment because of an imminent stoppage of work due to a labour dispute.

"It can be assumed with a reasonable amount of assurance, that had there been no labour dispute or prospect of such the claimant would have continued in his employment. It is the prospect of the dispute and cessation of work at the factory which prompted the claimant to 'voluntarily' leave his employment and then make application for benefit. Such separation from employment can hardly be designated as voluntary within the meaning of the Act. It was brought about solely by the expected cessation of work due to a labour dispute at the factory.

"Under the circumstances it is my opinion that the claimant lost his employment by reason of a labour dispute. Such being the case the penalties imposed automatically follow and must be in accordance with the provisions of the Act as stated in Section 43 (a):

"43. An insured person shall be disqualified from receiving benefit—

(a) if he has lost his employment by reason of a stoppage of work which was due to a labour dispute at the factory, workshop or other premises at which he was employed . . . but this disqualification shall last only so long as the stoppage of work continues.'

"The appeal of the insurance officer is allowed and the claimant is therefore disqualified from receipt of benefit for as long as the stoppage of work continues."

#### **Case No. CUB-159. (22 November, 1946)**

**Held:** That a claimant, employed as a cleaner at a bakery, who refused to carry out orders of the employer to move stock and was consequently dismissed, did not lose his employment by reason of his own misconduct, the orders issued being of an unreasonable nature.

The material facts of the case are as follows:

The claimant, aged 56, registered for work as a labourer, was last employed as a cleaner at a bakery from March 6 to June 27, 1946. On making claim for benefit he stated that he had been dismissed because he refused to help carry some boxes. The employer reported that he had "refused to carry out orders given. This man was asked to move some goods received upstairs to the stock room". He was disqualified for a period of six weeks on the ground that he had lost his employment by reason of his own misconduct. A court of referees unanimously removed this disqualification, being of the opinion that the claimant, a cleaner, was not employed to carry boxes, and that he should be given the benefit of the doubt.

The insurance officer appealed to the Umpire, his submission reading in part as follows:

"The claimant is not a specialized worker; he was hired by the employer as a cleaner, and, in my mind, the fact that the employer asked him to help carry certain merchandise does not constitute a change in service making the employment unsuitable. He did not prove that it was physically impossible for him to do this work (carry boxes) as requested."

## DECISION

The appeal was dismissed.

"From the facts and submissions before me it would appear that the claimant was discharged from his employment because of his refusal to carry out orders given him by an official of the firm at which he was employed.

"The question to decide is whether the orders issued were of a reasonable nature and should have been performed by the claimant. It is a question of fact only.

"The claimant appeared in person before the court of referees and they had every opportunity of examining him and determining the justice of his claim. They came to a unanimous decision.

"No new facts have been brought to my attention. Therefore I do not see any valid reason to interfere with the unanimous decision rendered by the court of referees.

"The appeal of the insurance officer is dismissed."

### **Case No. CUB-160. (22 November, 1946)**

**Held:** That a claimant is not entitled to any extension of the two-year period on the ground of total incapacity when the medical certificates produced do not indicate any specific disease or bodily or mental disablement.

The material facts of the case are as follows:

The claimant, separated from her employment on June 5, 1943, married and became the mother of two children before she made claim for benefit on April 23, 1946. She applied for extension of the two-year period for the periods September 1943 to August 20, 1944 and from June 4, 1945 to April 1, 1946, and produced two medical certificates, the first certifying that she had been unable to work during the above periods, and the second covering the period August 1, 1944 to June 1, 1945. The insurance officer did not grant the extension and this decision was upheld by the court of referees, whose unanimous decision was that a more definite certificate as to the nature of the incapacity should have been furnished.

The claimant appealed to the Umpire with the permission of the chairman, who was desirous of ascertaining whether this type of medical certificate should be accepted as sufficient evidence of incapacity.

## DECISION

The appeal was dismissed.

"The chairman of the court of referees, under date of September 14, 1946, has given permission to the claimant to appeal to the Umpire because he wanted me to determine if the medical certificates produced should be accepted as sufficient evidence to confirm that the claimant was incapacitated for work during the period in question.

"From the facts and submissions before me it is shown that the claimant left her employment with ..... in June 1943 in order to get married. Between this date and April 23, 1946, when she made application for benefit, she became the mother of two children.

"Section 29 (2) of the Act states:

"'If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in the first statutory condition, incapacitated for work by reason of some specific disease or bodily or mental disablement, or employed in any excepted employment, or engaged in business on his own account, the first statutory condition and the Third Schedule to this Act shall have effect as if, for the period of two years therein referred to, there were substituted a period of two years increased by such periods of incapacity or of such employment or business engagement but so as not to exceed in any case four years.'

"The evidence submitted does not indicate that the claimant was during the period in question incapacitated for work 'by reason of some specific disease or bodily or mental disablement'; therefore she is not entitled to the benefit of this section.

"It is apparent that the court of referees studied the case very carefully; under the circumstances, I see no good reason for disturbing their unanimous decision.

"The appeal of the claimant is dismissed."

#### **Case No. CUB-161. (22 November, 1946)**

**Held:** That misconduct is established when a claimant has refused to comply with a standard of work as set by an arbitrator, who has been appointed jointly by employer and employees and whose decision was to be binding on all parties.

The material facts of the case are as follows:

The claimant was one of a group of metal finishers, employed by an automobile manufacturer, who had for some months complained that the standard time allowance to complete an automobile body was too low. The matter was placed before the grievance committee and an arbitrator was appointed to set the production standard. These employees were then requested to adjust themselves to the standard set by the arbitrator and, when they refused to do so, were discharged. The insurance officer disallowed this claim and similar claims from other employees, on the ground that the claimants were discharged from their employment by reason of their own misconduct, in that they refused to conform to the work standard, and disqualified them for a period of six weeks. They were reinstated, without loss of seniority, through the intervention of the union of which they were members, but not as a group on metal finish work. On a further ruling of the arbitrator, they were not paid for the time during which they were suspended. They appealed to the court of referees which, by a majority decision, upheld the decision of the insurance officer.

The union appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From the evidence and submissions before me, the question to decide is whether the claimant was discharged for cause within the meaning of the Act.

"There was a dispute between the management and the men involved as to the number of jobs that should be turned out per hour. Acting within the terms of the contract between the company and the union an umpire or arbitrator was appointed who was mutually satisfactory to the company and the men. He made a study of the operation involved and came to certain definite conclusions. The men evidently were unable to comply with the findings of the arbitrator and because of this were warned and subsequently, upon their refusal to do the work as requested, were discharged from their employment.

"The decision of the arbitrator in this case cannot be ignored because he was the one who made a study of the problems involved in the dispute and who was chosen by both parties on account of his special qualifications in the matter. It had been agreed both by the company and the men that his decision would be final and binding. Had the grievances of the men been justified in the eyes of the arbitrator at the time of their discharge he would have allowed them pay for such time as they were unemployed. This request was refused the men by the arbitrator.

"The facts of the case, having been carefully considered by an arbitrator, an official of the provincial government and also having been carefully considered by a court of referees in the city of..... I cannot see any good reasons for disturbing the decision arrived at and the appeal of the claimant is therefore disallowed."

#### **Case No. CUB-162. (22 November, 1946)**

**Held:** That employment in his usual occupation at a distance from his home city, the wage offered being higher than that earned previously, was suitable employment for a claimant, a journeyman plumber, who had been unemployed for nearly five months. Although he was the only one living with his mother whom he had not claimed as a dependent, he had given no reason why he could not have made arrangements to have his mother live with him upon moving to another city.

The material facts of the case are as follows:

The claimant, an unmarried man, aged 44 years, made a renewal claim for benefit on December 31, 1945, stating that he had been employed as a plumber in L....., from September 28 to December 25, 1945, receiving a wage of 80 cents per hour. His claim was allowed. On May 13, 1946, the local office notified him of permanent employment as a foreman plumber, working nine hours per day, at a salary of \$50 per week. The claimant refused to apply for this employment in S....., a distance of 135 miles from L....., saying that he was alone with his mother and could not leave her.

The insurance officer disqualified him from receipt of benefit for a period of six weeks for having refused, without good cause, to apply for a situation in suitable employment. On appeal, a court of referees found that, although the employment was suitable, the claimant was justified in not accepting it on account of the distance from his home, and also because he was obliged to keep house with his widowed mother.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, it is indicated that the claimant had been unemployed from December 27, 1945 to May 13, 1946, and had been receiving benefit during most of that period. Had there been work available for the claimant in his home district, he, no doubt, would, during this period, have been able to obtain employment.

"The work offered was at a rate of pay higher than the one he was receiving in his own home town, and the reason given by the claimant, that he would not accept employment outside of the cities of Q..... and L....., cannot be regarded as a valid reason within the meaning of the Unemployment Insurance Act.

"The claimant points out that he was the only one living with his mother, although in the submission made it is indicated that she was not his dependent. There is no satisfactory reason given as to why the claimant could not have accepted the position and made arrangements for his mother to reside with him in the city of S.....

"Where a person has been unemployed and in receipt of benefit for the length of time that the claimant has been as in this case, employment outside of his own area becomes suitable employment within the meaning of the Act. The claimant neglected to avail himself of this opportunity and, therefore, comes under the disqualifications of the Unemployment Insurance Act.

"The appeal is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date this decision is communicated to him."

### Case No. CUB-163. (22 November, 1946)

**Held:** That the mere forwarding of a claimant's insurance book to the local office is no indication of a desire to register for employment and claim benefit. When a claimant refuses to sign the unemployment register for any week he forfeits his right to benefit for the period so covered and cannot be granted antedating of a subsequent claim to embrace the period during which he refused to sign the unemployment register. Leave to appeal to the Umpire should be given by a chairman of a court of referees only when it appears that a principle of importance is involved, or any other special circumstances, and the reason for granting such leave must be stated.

The material facts of the case are as follows:

The claimant became separated from his employment on December 10, 1945, and on January 2, 1946 forwarded his insurance book to the local office. On January 16 he wrote to the same office, enquiring about his insurance papers. On January 24 claim forms were forwarded to him for completion. On January 28 he called in person at the local office and made claim for benefit, requesting that it be antedated to January 2, 1946, the date on which he had forwarded his insurance book. The insurance officer was of the opinion that the claimant had not shown in any of his communications prior to his letter of January 16 that he wished to make claim for benefit, and he approved the antedating of the claim to January 16 only.

On February 2, 1946 the unemployment register for the week beginning January 28, 1946 was forwarded to claimant and on Febru-

ary 11 he was requested to return it duly completed. In a letter dated February 6, the claimant stated that he was refusing to sign the register because he wished his claim to be antedated as of December 10, 1945. Subsequently he failed to sign the forms mailed to him but repeatedly wrote, inquiring as to why he did not receive benefit. He was advised that no payment of benefit could be made unless the forms were duly signed and was notified that on account of the lapse of time it would be necessary for him to file a renewal claim if he wished to claim benefit for the period after January 28, 1946. Such renewal claim was filed on May 28, 1946 and the claimant requested that this claim be antedated as of January 28, 1946. The renewal claim was allowed but his request for antedating was refused.

The claimant appealed to the court of referees, which unanimously upheld the decision of the insurance officer.

With the permission of the chairman, the claimant appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"I must again draw the attention of the parties concerned to Section 58 of the Act. The chairman of the court of referees may give permission for a claimant to appeal from a unanimous decision given by a court of referees only when:—

"there is a principle of importance involved in the case or any other special circumstances by reason of which leave to appeal ought to be given."

And he must, moreover, give the reasons for his decision.

"In this instance, there appear to be no special circumstances or any principle of importance involved. I have given several decisions dealing with the question of antedating which are very clear in their meaning.

"The granting of leave to appeal in such cases as this one, entails a vast amount of work to the local and regional offices as well as to the office of the Umpire, and I think it would be in the general interest of all concerned if the chairman of the court of referees would exercise the utmost care and discretion in granting leave to appeal to a claimant except under circumstances very definitely within the meaning of the Act.

"The appeal is dismissed."

#### Case No. CUB-165. (22 November, 1946)

**Held:** That a claimant who had been employed in a semi-skilled capacity by the one employer for approximately eighteen years has good cause for refusing a referral to the same employer as a common labourer on the ground that the employment was not suitable and that the claimant had not the capacity to do it. The period of unemployment was more than seven months.

The material facts of the case are as follows:

The claimant, aged 44 years, was employed as a stone-cutter in a soapstone quarry from 1927 to December 11, 1945. He earned approxi-

mately \$20.00 per week, working on a piece-rate basis, nine hours per day. His initial claim for benefit, made on December 12, was allowed.

On July 20, 1946, the local office notified the claimant of employment, with his previous employer, as a labourer, loading boxes at a rate of pay of 50 cents per box. The claimant refused to apply for this employment, stating that the employer had not offered him work as a stone-cutter in the previous May, when stone-cutters were needed. He was ready to accept work as a stone-cutter with his former employer. For this refusal the insurance officer disqualified the claimant from receipt of benefit for a period of six weeks.

On appeal to a court of referees the claimant stated that it was his opinion that the employer's refusal to hire him in the spring was due to the fact that he was the president of the union, and that he did not feel able to perform the work of which he was notified. The court allowed the appeal, stating that the employment was not suitable and that the claimant was unable to perform the work.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was dismissed.

"This is a factual case and no principle of law is involved.

"The claimant a married man aged 44 had been employed with the same company for a period of 19 years. He was separated from his employment on the 11th day of December, 1945, and was offered other employment with the same company in June 1946, at a rate of pay which is lower than the one he was formerly receiving. He refused this employment upon the grounds already referred to.

"The claimant appeared in person before the court of referees, which had every opportunity of examining him and determining the justice of his claim. In reference to his statement, that he was not physically capable of performing the work offered, no medical evidence has been produced, but I assume that the court of referees which came to a unanimous decision have carefully considered this aspect of the case. It must be borne in mind that the court of referees consists of a representative of the employer and a representative of the employees with a neutral chairman.

"As no new facts have been brought to my attention, I do not see any valid reason to interfere with the unanimous decision rendered by the court of referees. The appeal of the insurance officer is dismissed."

## Case No. CUB-166. (25 November, 1946)

**Held:** That a claimant, seven months unemployed, who could not leave his home district to accept employment because he was preparing to engage in business on his own account, was not available for employment.

The material facts of the case are as follows:

The claimant, a married man, registered for work as a mechanic, was employed as such at a stone quarry from 1925 to December 11, 1945 at a wage of 42 cents an hour. He made claim for benefit on December 12, 1945 which was allowed. In July he was notified of employment as

a mechanic away from his home district, but he informed the local office that he could not accept employment away from home because he was building a garage, had signed a contract for gasoline tanks, and as soon as this was completed he would enter into business for himself.

On July 18, 1946 he was notified of a vacancy with his former employer, the work to consist of loading boxes of material at 50 cents a box. He refused to accept this employment, stating that he would return to his former employment only as a mechanic in a position similar to that which he held at the time of his separation seven months before. The insurance officer disqualified him for a period of six weeks on the ground that he had without good cause refused to accept a situation in suitable employment. The claimant appealed to a court of referees, which unanimously allowed the claim.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed, and the claimant was also held to be not available for work.

"From the facts and submissions before me it would appear that the court of referees have overlooked the important factor in the case as shown in Exhibit 2, already quoted, which indicates that the claimant has refused to accept an offer of employment as a mechanic to work outside of his own district. When a person has been out of work for the length of time that claimant has, an offer of employment does not become unsuitable by reason only that it is not in his own home district. Good cause must be shown to refuse such an offer. However, it is further indicated by the claimant in the same statement that he could not leave the district because he had a contract signed to have gasoline tanks placed in a garage that he was building in order to enter into business on his own account. This definitely places the claimant in a position where he is not available for employment.

"A claimant in order to receive benefit must be capable of and available for work but unable to obtain suitable employment as provided in Section 28 (iii) of the Act.

"Under the circumstances the appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date this decision is communicated to him."

## Case No. CUB-168. (29 November, 1946)

**Held:** That employment as a general factory worker at a wage of 45 cents per hour was suitable employment for a married woman whose only previous employment was as a radio examiner doing war work at a wage of 74.58 cents per hour, and who had been unemployed for eight weeks. Travelling time of forty minutes to reach one's work is not unusual or excessive in a large industrial area.

The material facts of the case are as follows:

The claimant, a married woman, was employed by a Crown company as a radio examiner in war work, at a wage of 74.58 cents an hour, and became separated on April 9, 1946 due to shortage of work. Her

claim for benefit was allowed. She registered for work as a packer and the local employment office endeavoured without success to obtain work in a shipping department for the claimant. On June 6, 1946 she was referred to general factory work at a distance of 40 minutes by street car from her home, the wage being 45 cents an hour, which was 5 cents an hour higher than the prevailing rate in the district. She refused to apply for the employment because she had had no experience in that type of work, and stated that she considered the wages too low and the work located too far from her home. The insurance officer disqualified her for refusing to apply for a situation in suitable employment, the period of disqualification being reduced to four weeks because of the extenuating circumstances. The court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, it is indicated that the claimant had no previous employment history prior to her acceptance of war work with the ..... at L....., .... When this war work terminated the claimant presumably entered the labour market with a view to accepting employment that could be considered suitable within the meaning of the Act. Her former type of employment was no doubt of such a nature that she could not expect to obtain the same again under the changed conditions which exist. Therefore, it would not be unreasonable to expect that the claimant should accept the employment which was offered, provided that it was suitable, considering all the circumstances and that this employment came within the provisions of the Unemployment Insurance Act.

"In the claimant's reason for refusal to accept the employment, she stated in one of her submissions:

"'No experience at factory work. Would prefer staying with my line of work in shipping room at 50 cents per hour to start. This position available too far to go and not enough money to start.'

"Therefore, the question reduces itself to the difference of five cents per hour in the rate of pay the claimant would accept and to the distance from her residence to the place of employment.

"In regard to distance, according to the evidence submitted, it would have taken the claimant forty minutes to reach the factory. In many previous decisions, I have stated that I do not consider, particularly in a large industrial centre like T....., that this length of time is excessive or unusual and, therefore, this cannot be accepted as a satisfactory reason for refusal to accept employment.

"Regarding the rate of pay offered, it appears that forty-five cents an hour was somewhat above the accepted rate of pay for the type of work the claimant was asked to perform. In view of all the circumstances and the length of time that the claimant had been unemployed, I do not consider the employment offered as being unsuitable.

"In their decision the court of referees have referred to one of my decisions, CU.-B. 66. In that case, the claimant made an application for benefit on June 22nd and on July 23rd was notified of a position in the

city of V..... where she had moved. It should be noted that the claimant was unemployed for a little over one month, during which time she had moved from C..... to the city of V..... In the present instance, the claimant had been unemployed from the 10th day of April and was notified of a position on the 6th day of June. In addition, she had been notified on previous occasions of employment which she had for various reasons refused to accept.

"In view of the circumstances, the claimant has not shown good reasons for refusing to accept the employment offered to her. The appeal of the insurance officer is allowed and the disqualification imposed in the first instance is restored as from the date that the claimant is notified of this decision."

#### **Case No. CUB-169. (29 November, 1946)**

**Held:** That employment as a sales clerk at the accepted rate of pay in the district was suitable employment for an egg-trayer who had been in receipt of a salary of \$23 per week, and who had been unemployed for six weeks in the off-season for egg-traying, the on-season lasting approximately six months in each year.

The material facts of the case are as follows:

The claimant was an egg-trayer who had been employed by a hatchery during each of the hatching seasons between 1937 and 1946, her salary then being \$23 a week, the season usually lasting approximately six months. For the last two years she had worked as a sales clerk between hatching seasons. She was laid off by the hatchery at the close of the season in July 1946, and her claim for benefit was allowed. Six weeks later she was notified of employment as a sales clerk in a department store at a wage of \$15 a week, which would have lasted until Christmas. She refused to apply for the situation because the wages were too low and there was little prospect for advancement. She also refused to apply for a situation in a general store, for the same reasons. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment.

She appealed to a court of referees, before which she appeared, and the court upheld the decision of the insurance officer by a majority decision, being of the opinion that, although she had acquired skill as an egg-trayer, the employment to which she was referred was suitable in view of the fact that her work in the hatchery was seasonal and that she had had some experience as a sales clerk.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me it is indicated that the work performed by the claimant as an egg-trayer was of a seasonal character, usually commencing in the early part of the year and continuing until the early part of the summer.

"On this last occasion the claimant was employed for a little over five months. It is apparent, therefore, that if she came into the labour

market for employment in what might be termed her 'off-season period', then she should be prepared to accept suitable employment.

"The proviso of Section 31 of the Act states as follows:

"'Provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between the employees and employers, or failing any such agreement, than those recognized by good employers.'

"The claimant had been unemployed from the 13th day of July until the 24th day of August, a period of approximately six weeks before she was offered employment at a lower rate of pay than she had been in the habit of receiving as an egg-trayer. Although the wages offered were considerably lower than the wages which she formerly received, these wages were at the accepted rate of pay, in the district where she resided, for the type of work which the claimant was asked to perform, and were those observed by agreement between employees and employers and recognized by good employers.

"Under the circumstances, the employment must be regarded as suitable; therefore, the appeal of the claimant is dismissed."

#### **Case No. CUB-170. (29 November, 1946)**

**Held:** That a claimant who refused to apply for suitable employment because she intended to go on vacation, was rightly disqualified for such refusal.

The material facts of the case are as follows:

The claimant, a married woman, was employed as an inspector by a farm machinery manufacturing company at a wage of 59 cents an hour. She made claim for benefit upon being laid off due to shortage of work, and her claim was allowed. Four months later she refused to apply for a situation with a roofing company as an unskilled worker, at a wage of 50 cents an hour, the prevailing rate of pay, because she had made arrangements to take her son on a holiday. She was under disqualification at this time for a previous refusal to apply for employment which was considered suitable, in view of which fact she thought that it was a good time to have a vacation. The insurance officer disqualified her for a period of six weeks for refusing to apply for a situation in suitable employment, and a court of referees reversed this decision.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"There is no dispute as to the facts of the case. From the submissions made it is apparent that the claimant had been unemployed for approximately five months when she was notified of the vacancy at

the B..... Company. She had previously refused employment with the W..... Company and had been disqualified in accordance with the provisions of the Act.

"A claimant, in order to be eligible for receipt of benefit must hold himself available for employment and when an offer is brought to his attention he must be in a position to accept it without delay.

"Considering the length of time the claimant has been unemployed and in receipt of benefit, she should have adjusted her personal affairs so as to accept the employment when offered to her.

"The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date this decision is communicated to the claimant."

#### **Case No. CUB-171. (29 November, 1946)**

*Held:* That an insured person, to qualify for benefit, must be genuinely seeking employment and must be available to accept suitable employment without delay when offered. Where a married woman is the bread-winner of a family a broad interpretation may be allowed both as to the question of suitability of employment as well as to the question of availability.

A woman whose domestic responsibilities were such that she was unable to accept employment which involved working overtime, was held to be not available for employment.

The material facts of the case are as follows:

The claimant, a married woman with a small child, made a postal claim for benefit sixteen months after separating from employment, and a month later was notified of a situation as a bank teller in a city adjacent to the small town where she lived (a distance of nine miles by bus and street-car). Her employment history showed two years' experience as a bank teller. She applied for the employment but refused to accept it when, according to her story, she was told that the position entailed a great deal of overtime work, which she claimed would interfere with the discharge of her domestic duties. The insurance officer disqualified her for a period of six weeks on the ground that she had neglected to avail herself of an opportunity of suitable employment, and a court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me it appears that the claimant refused to accept the employment offered because she had no desire to work the overtime that may have been necessary. However, there is no mention in her statement as to the amount of overtime that she had been requested to work.

"I have to consider the question of the availability of the claimant and of the suitability of the employment offered.

"The claimant is residing in a district where there is no prospect of employment whatsoever. Any employment suitable to the claimant would probably be in the city of ..... which is some distance away from her present residence.

"It is shown in the submissions that the claimant was separated from her employment on February 10th, 1945, and reported to the employment office of the Commission on June 18, 1946, when she filed a postal claim for benefit. This fact indicates that the claimant for a period of approximately sixteen months had to all intents and purposes withdrawn from the labour market. In determining the appeal this factor cannot be ignored.

"An insured person to qualify for benefit, must be genuinely seeking employment and must be available to accept suitable employment without delay when offered.

"In cases where a married woman is a bread-winner of a family, a broad interpretation may be allowed both as to the question of suitability of employment as well as to the question of availability. In the present instance the facts indicate that the household duties of the claimant are of such a nature that they considerably restrict her availability. If claimant had not the responsibility of a mother and housewife, she would, no doubt, have been able to accept the employment offered, but under existing circumstances she is not in a position to do so.

"Having considered all the facts, I regard the claimant as being so restricted in her availability due to her domestic obligations that she cannot be considered as being available for employment. The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date this decision is communicated to her."

#### **Case No. CUB-172. (29 November, 1946)**

**Held:** That a claimant who had an employment pattern of night work and who had domestic responsibilities which made day work impossible is subject to disqualification when she refuses suitable night work.

The material facts of the case are as follows:

The claimant, a married woman, was last employed as a drawframe tender by a textile company on night work at  $41\frac{3}{4}$  cents per hour plus 10% bonus. She was laid off when the night shift was discontinued, and she was unable to accept day work owing to domestic responsibilities. When, after ten weeks' unemployment, she refused to apply for work as a checker's helper on the night shift with a bakery at \$12.00 per week, the insurance officer decided she had refused to apply for suitable employment and disqualified her for six weeks.

A court of referees unanimously rescinded the disqualification and the insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me it is shown that the claimant is a married woman and the mother of four children. She had been employed on night duty in the city of ..... for a period of approximately eighteen months and was separated from this employment because she claimed she did not wish to work daytime, and the night shift had been discontinued. She was only willing to accept

employment on a night shift similar to the work which she had been doing in her last employment. Her claim for benefit was allowed.

"It is understandable that a married woman who has a husband, four children to look after and household responsibilities would find it extremely difficult to accept employment during the day period. The claimant had restricted herself to night employment and when night time work was offered to her she refused to accept it on the grounds that it was not respectable to work at the [bakery] and that the wages were too small. There are other women employed at similar work and also at the same wages which the claimant refused to accept.

"It is evident that the claimant, on account of household duties, is considerably restricted in her availability to accept employment. An insured person, in receipt of benefit, must be available for employment, prepared to accept such employment, if suitable, when offered, and also must be genuinely seeking work.

"Considering all the circumstances of the case, I regard the claimant as not being entitled to benefit within the meaning of the Act. The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date this decision is communicated to her."

#### **Case No. CUB-173. (29 November, 1946)**

**Held:** That work as an assembler of radio parts, at a wage of 36 cents per hour, the prevailing rate for this type of employment, was suitable employment for an insured woman whose usual occupation was that of chocolate dipper, her wage 46 cents an hour, and who had been unemployed for six weeks during a period when there was no work in her usual occupation.

The material facts of the case are as follows:

The claimant, a single woman, was employed as a chocolate dipper at a candy factory at a wage of 46 cents an hour and, after being unemployed for six weeks, she was notified of employment assembling radio parts at 36 cents an hour, the prevailing rate of pay. She refused to apply for this work on the grounds that the wages were too low and that she thought she could find more suitable employment in a few weeks. The local office reported that she was a skilled chocolate dipper but that all candy firms in the district ceased dipping chocolates about June and recommenced around October, and that the claimant wished to wait to take the place of a friend in a confectionery store who would be going on holidays shortly. The insurance officer disqualified the claimant for a period of six weeks because she had without good cause refused to apply for a situation in suitable employment. The claimant appealed to a court of referees, which allowed the claim, finding that a reasonable time had not elapsed which would make the employment notified to the claimant suitable.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"There is no dispute as to the essential facts of the case. The question that I am called upon to decide is whether the court of

referees erred in finding that the employment offered to the claimant was not suitable within the meaning of the Act.

"As already determined in previous cases, no hard and fast rule can be laid down, as circumstances may not always be identical. The claimant had been on benefit from the 12th day of June, 1946, and the employment was offered to her on the 8th day of July, 1946. When the case came before the court of referees on August 21, 1946, the claimant was still unemployed and in their decision the court state that she expected to return to her former occupation within two weeks. The claimant was separated from her employment on the 27th day of May, 1946; the court of referees considered the case on August 21, 1946. This creates a rather lengthy period for a person to be unemployed.

"The employment offered to the claimant was at the accepted rate of pay for the district in which she resides; acceptance of this employment would not in any way have jeopardized her future opportunities to re-establish herself in employment in her former occupation.

"Under the circumstances, the appeal of the insurance officer is allowed and the disqualification of six weeks is made effective as from the date that this decision is communicated to the claimant."

#### **Case No. CUB-175. (29 November, 1946)**

**Held:** That employment as a farm labourer, at wages which were at the prevailing rate or higher, was suitable employment for an insured man who had been employed formerly as a bushman, after nearly eight months of unemployment. As the work was suitable, the claimant should have made an honest effort to find out whether or not he could perform the duties required.

The material facts of the case are as follows:

The claimant, registered for work as a craneman, was employed as a bushman from September 15 to December 15, 1945 at a wage of \$65 a month. He made claim for benefit on May 16, 1946, which was allowed. On August 9, 1946, he was notified by mail of three referrals to employment as a farm hand, the rates of pay to be, respectively, \$40 to \$50 per month, \$90 per month and, in the third case, the wages to be arrived at, all three situations to provide room and board in addition to wages. The wages offered were not lower than those prevailing in the district and were higher than those received by the claimant in his previous employment. The claimant refused to apply for any of these situations, stating that he had had no experience as a farm hand, and the insurance officer disqualified him for a period of six weeks on the ground that he had without good cause failed to carry out written directions given to him with a view to assisting him to find suitable employment. The claimant appealed to a court of referees which reversed this decision finding that the employment was not suitable.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, it appears that the claimant had been unemployed since the 15th day of December, 1945, until the time when he was notified of the positions referred to, on

August 9, 1946. He had also been on benefit since May 16, 1946. Although the claimant had been registered as a craneman operator, he had been in the habit of doing other kinds of work, as was the case in his last employment as a bushman with the ..... Company in .....

"The work offered to the claimant as a farm hand, with wages as high as \$90.00 a month, was the type of work that the claimant should have accepted. His lack of previous experience at this type of work cannot be accepted as a valid reason for his refusal. The work on the farm would not likely have entailed any more physical exertion than work in the bush. Before refusing the offer of employment, the claimant should at least have made an honest effort to find out if he could meet its requirements.

"Therefore, I consider that the claimant was not justified in refusing to accept the employment offered, as he had been unemployed and on benefit for a considerable length of time. Proviso of Section 31(b), which reads as follows, is applicable in this instance:

"Provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers, or, failing any such agreement, than those recognized by good employers."

"In view of the circumstances, the appeal of the insurance officer is allowed and the disqualification imposed by the insurance officer is restored as from the date that this decision is communicated to the claimant."

#### **Case No. CUB-176. (2 November, 1946)**

*Held:* Refusal of an increase in salary, which is already at the prevailing rate in the district, does not furnish just cause for voluntarily leaving one's employment. Permission to appeal should not be granted by a chairman unless there is a principle of importance involved, or any other special circumstances by reason of which leave to appeal ought to be given.

The material facts of the case are as follows:

The claimant, an unmarried girl 26 years of age, was employed as a general office assistant in the rural village of E..... for more than three years, receiving on separation from this employment on April 15, 1946, a salary of \$81.67 per month. She made a claim for benefit on April 18, and gave as her reason for having left her employment the fact that she had been refused an increase in salary. She stated that her parents had moved away from E..... the previous November, and, since she had to pay board from that date, she found her salary insufficient.

The insurance officer disqualified her from receipt of benefit for a period of six weeks for having voluntarily left her employment without just cause. A court of referees dismissed the claimant's appeal, but the chairman gave permission to appeal.

The claimant thereupon appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From this unanimous decision of the court of referees, the claimant has appealed to me with the permission of the chairman of the court of referees. In allowing this appeal the chairman gave the following reason:

"The court of referees decided that this claimant left her position voluntarily, therefore she could not be given any unemployment benefits. However, I am willing to allow her to appeal to the Umpire on the ground that she claims she had a position in view before leaving the ..... Co. but that some circumstances arose which prevented her from taking this position."

"The court of referees has ruled unanimously against the claimant on this very question and she has offered no further evidence in support of her contention when she appealed to me.

"According to Section 58 (c) (ii) of the Unemployment Insurance Act, the chairman of the court of referees is given power to allow a claimant to appeal to the Umpire from a unanimous decision of the court, if, in his opinion there is:

"'a principle of importance involved in the case or any other special circumstances by reason of which leave to appeal ought to be given.'

The chairman allowed the appeal on grounds which neither involved a principle of importance nor indicate any special circumstances by which an appeal to the Umpire should have been allowed.

"A chairman of court of referees should be extremely careful in granting permission to appeal under Section 58 of the Act. A great amount of work is involved in all such appeals, and no appeal to the Umpire should be allowed, unless there are actually special circumstances or principle of importance involved.

"The claimant, according to the facts and submissions before me, had been employed by the same corporation for three years and seven months at a salary of \$81.67 a month which was the accepted rate of pay for the district. She left her employment on her own accord, because she was dissatisfied with the wages she was receiving, due to a change in her domestic circumstances. The rate of pay she was receiving was, according to the decision of the court of referees, the recognized rate of pay for this type of work in the district in which she was employed.

"Under the circumstances, there is no valid reason why the decision arrived at by the court of referees should be disturbed and the appeal of the claimant is dismissed."

### Case No. CUB-177. (6 December, 1946)

**Held:** That employment for an unskilled female factory worker, at 36 to 40 cents an hour, was unsuitable when her previous rate of wages was 51 cents per hour and the period of unemployment was thirteen days.

The material facts of the case are as follows:

The claimant, aged 21 years and separated from her husband, was employed as an unskilled factory helper from July 29 to August 7, 1946, at a wage of 51 cents per hour, when she lost her employment due to

shortage of work. On August 20 she was notified of permanent employment as a radio coil assembler at a wage of 36 cents to 40 cents per hour, which was stated to be the prevailing rate of pay for this type of work. She applied for the employment, and reported on her return to the local office, that she had informed the employer, in response to his question, that she would return to her former employment if possible, and in consequence was not hired.

The insurance officer disqualified her from receipt of benefit for a period of six weeks for having refused, without good cause, to accept a situation in suitable employment.

A court of referees allowed her appeal, on the basis of the large reduction in wages and the short period of unemployment.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"From the facts and submissions before me it is shown that the claimant had been unemployed for a comparatively short period, approximately 12 days, when she was notified of another position at a rate of pay considerably lower than the one she had been previously earning.

"In his appeal to me, the insurance officer raises only one point, that the claimant when she stated to the ..... that she still hoped to return to her former employment, she knew or ought to have known that she had little or no chance to be rehired. This statement is not substantiated by any evidence and moreover were it supported by reliable evidence it does not disclose any sound reason for an appeal under the Act.

"There is very little merit to the appeal of the insurance officer, and I see no valid reason for disturbing the unanimous decision given.

"The appeal is, therefore, dismissed."

#### Case No. CUB-178. (6 December, 1946)

**Held:** That employment as a sales clerk at a salary of \$14.00 per week was suitable employment for an office clerk, unemployed for one year, who had previously earned \$105.30 per month.

The material facts of the case are as follows:

The claimant, a married woman, aged 24 years, registered for employment as a clerk, was employed as such by the Dominion Government from February, 1945 to August 12, 1945, at a salary of \$105.30 per month. Her initial application for benefit, made on July 5, 1946, was allowed.

On August 28, 1946, the local office notified her of a position as a sales clerk with a store in her home city at a salary of \$14.00 per week, which is the prevailing rate of pay in the district. She refused to apply for this position, claiming that the pay was insufficient and her arches were poor. On this refusal the insurance officer disqualified her from receipt of benefit for a period of six weeks.

She appealed to a court of referees, citing the low salary and her lack of experience in sales work. The court, by a majority, maintained the insurance officer's decision.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The court of referees heard the case in the City of ..... on October 4, 1946. The claimant was present in person and by a majority decision they upheld the action of the insurance officer. In their decision they state in part as follows:

"After having been continuously unemployed from the 12th August, 1945 to 28th August, 1946 (over a year and drawing benefit from the fund from 5th July, 1946) she was offered a position as a sales clerk with ..... at ..... at \$14.00 per week. The claimant declined to apply for this position on the ground "poor arches; insufficient pay." In view of the long period of unemployment, we are of the opinion that claimant should have applied for the position offered."

"From this decision of the court of referees, the claimant has appealed to me but produces no new facts in support of her claim for benefit. She emphasizes that she was in receipt of approximately \$100 per month for a number of years prior to making application for benefit and that the work of a sales clerk at \$14.00 per week was not sufficient salary.

"From the facts and the submissions before me, it is evident that she had to all intents and purposes withdrawn from the labour market on the 12th day of August 1945 and did not return thereto until July 1946. The work that she was formerly engaged in was no doubt work of a war nature, and when she returned to the labour market after an absence of about one year she did so under changed conditions.

"Under the circumstances the work offered to claimant appeared to be suitable employment within the meaning of the proviso of Section 31 of the Act which reads as follows:

"Provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers."

"I see no valid reasons for disturbing the decision arrived at by the court of referees and the appeal is dismissed."

### Case No. CUB-179. (6 December, 1946)

**Held:** That there was no relief from disqualification for having lost his employment by reason of a work stoppage caused by a labour dispute for a claimant who did not belong to the union involved (the strike vote having been taken some time before he entered this employment), as he was included in the bargaining agreement and was directly interested.

The material facts of the case are as follows:

The claimant, a married man, aged 51 years, registered for work as a foreman, was last employed as a furnace man by a manufacturer of electrodes and alloys, receiving 76 cents an hour, from June 8 to July 8,

1946, when he lost his employment by reason of a labour dispute which resulted in a stoppage of work at the plant. On July 9, 1946 he filed a renewal claim for benefit. The insurance officer disallowed the claim on the ground that he had lost his employment by reason of a stoppage of work which was due to a labour dispute and disqualified the claimant for so long as the stoppage of work continued.

A court of referees, before which the claimant appeared, found that he was directly interested in the labour dispute which caused the stoppage of work, and dismissed the appeal.

The claimant, with permission of the chairman, appealed to the Umpire on the ground that he could not be interested in the dispute as the strike vote was taken eight or ten weeks before June 8 and he was not a member of the Union.

## DECISION

The appeal was dismissed.

"In the agreement between the company and the union and according to the evidence before me, all hourly men employed by the company came under the bargaining agreement as between the company and the union. The claimant, although not a member of the union, was in the group for whom the union was acting and was, therefore, directly interested in the dispute at the plant. In addition, in Exhibit C4 there is a list of the names of foremen and guards employed at the plant who were not entitled to union membership and who, therefore, could not come in the category of those for whom the union could speak. The name of the claimant is not in this list. In a further document under date of June 24th, it is indicated that the company, as a result of negotiations that were then taking place was agreeable to give an increased rate of pay from 8 to 12¢ per hour, and that the claimant would come within the category of those receiving such an increase.

"It is obvious, therefore, that within the meaning of Section 43 (a) (i) of the Act, the claimant has lost his employment by reason of a stoppage of work due to a labour dispute in which he was directly interested. This interpretation has already been given in several previous decisions dealing with similar matters.

"The appeal is dismissed."

## Case No. CUB-180. (6 December, 1946)

**Held:** That work as a waitress is suitable employment for a bank cashier who has been unemployed for a lengthy period.

The material facts of the case are as follows:

The claimant, 23 years of age and married, was employed by a bank as a cashier for a period of four years prior to her marriage and after that was unemployed for nine months. She then worked in a temporary capacity as an office clerk for six weeks at a wage of sixty cents an hour, and made claim for benefit when that employment terminated. Approximately three months later, on August 5, 1946, she was disqualified from receipt of benefit for a period of six weeks when she refused to apply for work as a hotel waitress at \$8.00 a week plus meals and tips. The proprietor of the hotel claimed that her remunera-

tion would amount to \$25.00 per week. A court of referees reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, it is evident that the claimant was unwilling to accept the work offered because she had no experience and that the wages were too low, and preferred the \$10.98 per week insurance benefit to the \$8.00 per week basic wage at the ..... hotel.

"The questions raised in this case, and for me to consider are whether the employment offered was suitable, and secondly, whether the claimant, in view of her domestic obligations, was in a position to accept suitable employment when offered to her. The claimant had been unemployed for a considerable length of time when the employment offered was refused on the ground already stated. Had there been any prospects of claimant obtaining employment in her former occupation, no doubt she would have been able to have obtained same during the time that she was unemployed. Not being able to obtain employment in her usual occupation, then claimant should have been prepared to accept other employment when such was offered to her. The employment offered required no experience and was of a type that the claimant could have performed or, at least should have been willing to accept and give it a trial.

"In a previous decision of mine—CUB-120—a case very similar to the present one in which a claimant was asked to work as a waitress and cashier, I decided that such work in the circumstances was suitable employment within the meaning of the Act after a reasonable 'lapse of time.' It appears to me that in this instance, the work was also suitable within the meaning of the Act, as claimant had been unemployed for approximately twelve weeks.

"The question of availability is also raised in this case by the claimant's own submissions, when she states that she is a married woman and must be free at meal hours, and therefore, the hours, which are 40 per week, do not suit her and the work is unacceptable.

"In CUB-171, in dealing with the problem of suitability of employment offered to a married woman, I stated that where a married woman is a breadwinner of a family, a broad interpretation may be allowed as to the question of suitability of employment as well as to the question of availability.

"In this instance the claimant evidently is not in the position of having to provide her own means of livelihood. She has household responsibilities which considerably restrict her availability, as admitted in her own submissions. It would appear to me that in addition to the employment offered being suitable, the claimant, by her own admissions, has shown that she has so restricted her availability that it is very doubtful if she is available for employment.

"The appeal of the insurance officer is allowed, and the claimant is disqualified from receipt of benefit for a period of six weeks as from the time this decision is communicated to her."

**Case No. CUB-181. (6 December, 1946)**

**Held:** That a Canadian who has voluntarily left suitable employment in the United States, which he had accepted of his own accord, had not just cause for leaving merely on account of the employment being in the United States. It is a commonly accepted practice for large numbers of Canadian people to accept employment in the United States for considerable periods in each year. The distance from the claimant's home to his place of employment was not excessive compared with the distance which Canadians often have to travel in order to secure suitable employment.

The material facts of the case are as follows:

The claimant, a married man, aged 41 years, registered for work as a welder, was last employed as a mine helper by a mining company in the United States at the rate of 88½ cents an hour from July 26 to August 9, 1946, when he voluntarily left his employment in order to return to his home city in Canada. He filed claim for benefit on August 15, 1946 and gave as his reason for separation that he was earning \$35.00 per week, out of which he was required to pay \$14.00 for board and to meet other incidental expenses for himself. He stated further that the amount remaining from his salary was not sufficient to support his family at home and that for this reason he left his employment. The employer stated that the claimant left advising that he was going to work in a lumber camp in Canada.

The insurance officer disqualified the claimant for a period of six weeks on the ground that he had voluntarily left his employment without just cause. A court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was allowed.

"From the facts and submissions before me it is evident that the claimant of his own accord accepted the position with the ..... Company, ...., in the state of ...., and was in no way 'forced' to expatriate himself. T..... is a distance of approximately 250 miles for S..... The rate of pay that the claimant was receiving was \$0.88½ per hour for a 40-hour week, and it was evidently the higher rate of pay that attracted him to the work offered at T..... The claimant found, after working at the ..... Company, that his living expenses were higher than he anticipated and that approximately only one-half of his salary would be available for his family in Canada. This would be approximately \$75.00 a month. The claimant stated that it was his intention of working in the bush in Canada, and had he done so it is doubtful if the amount he would be able to send to his family would be any greater than the amount he could send from T.....

"However, one of the questions I have been asked to decide is whether a Canadian who accepts employment in the United States should, for the purpose of the Act, be regarded in a somewhat similar position as an insurable person who is employed in Canada.

"The court of referees in their decision stated that Canadian citizens should 'not be forced to expatriate themselves to earn their living and that of their family'. In considering that question, one must do so in the light of all the circumstances of the case and also with due

regard to the Unemployment Insurance Act. In the Act itself, there are several references to employment outside of Canada. These are to be found in (c) of the first schedule to the Act as well as in (2) in Section 14 of the Act. Further, in the year 1942, an agreement was entered into between the Government of the United States and the Government of Canada in which reciprocal arrangements were made to cover insurable persons in both countries in regard to benefit under the respective Unemployment Insurance laws. It will be observed from these facts that the problem of employment in the two countries is generally accepted by both the Government of the United States and the Government of Canada. It might also further be pointed out that it is a commonly accepted practice for large numbers of Canadian people to accept employment in the United States for considerable periods in each year. The decision of the court of referees in this case is contrary to the generally accepted practice in the Dominion and to the best interest of all concerned. The distance from the claimant's home to T....., in the state of ..... is not excessive compared with the distance which Canadians often have to cover in order to secure suitable employment.

"For these reasons, the court of referees erred in their decision. Therefore, the appeal is allowed and the disqualification of six weeks imposed by the insurance officer is restored as from the date that this decision is communicated to the claimant."

### **Case No. CUB-183. (23 December, 1946)**

**Held:** That a claimant who refused suitable employment because he was caring for an injured wife was properly disqualified for non-availability. It is desirable that a claimant who makes a statement about the physical condition of his family as a reason for a claim, should submit medical or other satisfactory evidence in support of such statement.

The material facts of the case are as follows:

The claimant was employed as a carpenter from April, 1945, to April 27, 1946, at a salary of \$35.00 per week, and lost his employment because of lack of work. His claim for benefit, made on May 28, 1946, was allowed. On September 16 next, the local office notified him of employment as a carpenter at the prevailing rate of pay of 75 cents per hour. He refused to apply for this employment, stating that his wife had broken both her arms in a car accident and he was forced to care for her, as he could not find anyone to do so. The insurance officer disqualified him from receipt of benefit for a period of six weeks, as it appeared that he was not available for employment.

A court of referees allowed the claimant's appeal, and the insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the facts and submission before me, it is shown that the court of referees allowed the claim for the benefit on the ground that the claimant was attending to his wife who was alleged to be injured, as a result of an accident. There is no record or evidence of any kind

either given before the court of referees or in the submission before me to prove the contention made by the claimant in this instance. I think it would be desirable procedure to be adopted by courts or referees if, when a claimant makes a statement in reference to the physical condition of his family as a reason for a claim, medical or other satisfactory evidence would be submitted in support of such a statement.

"The claimant had been unemployed since the 27th day of April, 1946, and was unemployed at the time the case was heard by the court of referees, a period of approximately six months.

"The claimant is a carpenter by trade, and it is common knowledge that the demand for this class of labour, particularly during the months the claimant was unemployed, has been very heavy, and it seems more than unusual that the claimant was unable to obtain employment at his own trade.

"The records also indicate that on the 11th day of July, the claimant was offered suitable employment at his own trade, which he refused to accept, and, therefore, was disqualified for a period of six weeks in accordance with the provisions of the Unemployment Insurance Act. It would appear to me that the claimant had ample opportunity of adjusting his domestic circumstances during the period that he was unemployed, in order to allow him to accept any employment that was offered.

"The employment offered was suitable employment within the meaning of the Act, and his refusal to accept this employment brings the claimant within the disqualification set out under the Act.

"The appeal of the insurance officer is therefore, allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him."

#### **Case No. CUB-184. (23 December, 1946)**

**Held:** That, as a general rule, a claimant who applies for an extension of the two-year period on account of incapacity before, during, and after childbirth may be granted an extension of twelve weeks, (for six weeks before and six weeks after childbirth).

The material facts of the case are as follows:

The claimant, a married woman, aged 26 years, registered for work as a sales clerk, was last employed as such at a salary of \$11.50 a week from June 1, 1940 until March 3, 1943 when she separated from her employment in order to be married. On March 8, 1946, she filed a claim for benefit, which was disallowed on the ground that she could not fulfil the first statutory condition.

The claimant applied for extension of the two-year period, stating that she had been unable to work between March 8, 1944, and September, 1945. In support of this contention she produced a medical certificate reading as follows:

"... got married on September 4, 1943 and has not worked since. She gave birth twice and had to take care of her children. She is now well and in a position to work."

The insurance officer did not approve of the extension, on the ground that total incapacity of the claimant was not proven in accordance with the Act. The claimant appealed from this decision to a

court of referees and the court before which she appeared, by unanimous decision, reversed the decision of the insurance officer and allowed the extension.

The insurance officer appealed to the Umpire from the decision of the court of referees, making the following submission:

"As the claimant did not have contributions to her credit since March 3, 1943, date on which she left her former employment to get married, she made application for extension of the two-year period. She based her application on the ground of physical incapacity between March 8, 1944 and September, 1945.

"As a result of a request for further information to the doctor, the following explanations were given by him:

"... was not supposed to work during the period of her pregnancies and she had to take a rest for at least 21 days after her pregnancies.

"With regard to dates, please communicate with her as I have nothing here (on record) in this regard."

"Owing to the lack of particular circumstances specified on file, showing that the claimant was totally unable to work during the course of her two pregnancies, the insurance officer is of the opinion that a period of two months preceding immediately each of the two pregnancies and a period of 20 days following each of them might be considered as periods of total incapacity, within the meaning of the Unemployment Insurance Act, 1940, for the purpose of extension of the two-year period."

## DECISION

The Umpire's decision was that the extension of the two-year period should be approved only for the periods of incapacity covering six weeks prior to and six weeks subsequent to childbirth and gave as his reasons:

"It is evident that the claimant retired from employment on the third of March, 1943, in order to get married. Between the date of her marriage and her claim for benefit, the claimant had given birth to two children. The medical certificate submitted by the claimant does not in the least indicate that the claimant was incapacitated during the whole period. Section 29(2) of the Act, which applies in this case, reads as follows:

"29(2) If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in the first statutory condition, incapacitated for work by reason of some specific disease or bodily or mental disablement, or employed in any excepted employment, or engaged in business on his own account, the first statutory condition and the Third Schedule to this Act shall have effect as if, for the period of two years therein referred to, there were substituted a period of two years increased by such periods of incapacity or of such employment or business engagement but so as not to exceed in any case four years.'

"In previous decisions dealing with the extension of the two-year period, I have stated that a person, in order to benefit by this section of the Act, must be incapacitated for work by some specific disease or bodily or mental disablement.

"A woman suffers on account of childbirth a total temporary incapacity. The length of this incapacity may vary according to circumstances. Generally speaking, medical and legislative authorities have determined the normal period of incapacity as being approximately six weeks prior and subsequent to the event. It seems reasonable to accept this view, except where under very special circumstances it is shown that a longer period of incapacity took place.

"May I add that an insured person who withdraws herself from the labour field in order to get married and returns thereto at a later period, must bear in mind that the fundamental condition of availability is still applicable in her case, and that she must adjust her domestic circumstances accordingly in order to be entitled to benefit under the Unemployment Insurance Act.

"In the present instance, there has been no proof submitted that the claimant was incapacitated for any period except during the time she became the mother of two children. As I have already stated, six weeks prior and subsequent to such an event is a reasonable time to allow and the claimant can be said to have been incapacitated for a period of twelve weeks on each occasion that she give birth to a child."

### **Case No. CUB-185. (23 December, 1946)**

**Held:** That the duty of a claimant in the matter of following up a prospect of employment, the general nature of which is furnished by the local office, is recited in the Act. One who refuses to apply for suitable employment of which he is notified is subject to disqualification.

The material facts of the case are as follows:

The claimant, married, aged 40 years, was employed as a pork trimmer in a meat packing plant from June 2, 1942 to April 30, 1946, at a wage of 55½ cents per hour, and lost her employment because of an agreement between the employer and the union that certain female employees were to be replaced by men. Her initial claim for benefit, made on May 1, 1946, was allowed.

On August 19, 1946, and on a subsequent date the claimant was notified of employment for which she refused to apply, and was disqualified. On three occasions her appeals were heard by a court of referees, and in each case the court unanimously upheld the decision of the insurance officer. (The last occasion was for a re-hearing under Section 64 of the Act.) From the last decision of the court, permission was given to appeal to the Umpire to discover what duty rests upon a claimant in the matter of following up a prospect of employment, the general nature of which is furnished by the employment office.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The answer to this submission made to me by the chairman of the court of referees is to be found in Section 43(b) of the Act which reads as follows:

"If on a claim for benefit it is proved by an officer of the Commission that the claimant—

(i) after a situation in any employment which is suitable in his case has been notified to him by an employment office or other

- recognized agency, or by or on behalf of an employer as vacant or about to become vacant, has without good cause refused or failed to apply for such situation, or refused to accept such situation when offered to him, or
- (ii) has neglected to avail himself of an opportunity of suitable employment, or
  - (iii) has without good cause refused or failed to carry out any written direction given to him by an officer of the employment office with a view to assisting him to find suitable employment (being directions which were reasonable having regard both to the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district in which the claimant resides).'

"In the present instance the claimant had been requested to go and apply for employment at various establishments in the City of C....., and she refused to follow the instructions given to her by an insurance officer of the Commission. The instructions given to claimant were of a reasonable nature and no good grounds have been shown by the claimant for her refusal to accept these instructions.

"As this is the only matter which the chairman has referred to me in connection with the case, it is not necessary to go into any further details respecting the decision given by the court of referees.

"Under the circumstances, I see no valid reason for disturbing the unanimous decision given by the court of referees and the appeal therefore, is dismissed."

#### **Case No. CUB-186. (23 December, 1946)**

**Held:** That a claimant who has been quarantined in his home on account of a contagious disease is not available for work during the period of the quarantine.

The material facts of the case are as follows:

Approximately one month after separation from employment, the claimant filed a claim for benefit and also requested to have his claim antedated to the date of separation, at the same time producing a doctor's certificate to the effect that during the past month his residence was in close quarantine. The insurance officer allowed the claim but referred the application to antedate to a court of referees. The court, by unanimous decision, approved the antedate.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submission before me, there are two points to be considered:

"First: is the claimant available for work?

"Secondly: if so, should his claim be antedated to the date when he was first quarantined?

"There is no dispute as to the essential facts of the case.

"In the home of the claimant, an outbreak of disease occurred which made it necessary in the interests of the community that he should be confined to his home. This condition is mandatory and is enforceable by law.

"By the competent authorities in such matters, all persons residing in the same home where a contagious disease has broken out are to all intents and purposes placed in the same position as if they were actually infected. Such persons are not allowed by law to leave their homes and are therefore regarded in a sense as sick persons until such time as medical authorities are satisfied that all danger to public health has passed.

"In this instance the claimant unfortunately found himself in this position and one can readily sympathize with him in a situation of this character. A person who is sick or potentially sick is not entitled to benefit under the present Act, and like any person who is confined to his home suffering from a disease and unable to follow his employment, is not available for work in accordance with the third statutory condition under Section 28 (iii) of the Act, which reads as follows:

- "28. The receipt of insurance benefit by an insured person shall be subject to the following statutory conditions, namely,—
- (iii) that he is capable of and available for work but unable to obtain suitable employment."

"It is obvious that the claimant was not in a position to fulfil this condition as he could not be regarded as being available for work within the meaning of the Act.

"Having come to this conclusion, it is not necessary for me to deal with the second question raised, that of antedating.

"Under the circumstances, the appeal of the insurance officer is allowed."

#### **Case No. CUB-188. (23 December, 1946)**

*Held:* That employment as an apprentice weaver at 25 cents per hour, in a rural town with a small population, was suitable employment for a single woman whose last occupation was that of hand presser at a wage of about \$18.00 per week, in a large city which she had left on termination of her employment, the period of unemployment being nearly five months. A chairman of a court of referees should be extremely careful in granting leave to appeal.

The material facts of the case are as follows:

The claimant, a single woman 45 years of age, was employed as a hand presser by a lingerie manufacturer in the city of M..... from October 1935 to February 13, 1946, earning approximately \$18 per week on piecework. She left this employment voluntarily and went to L..... where she made a postal claim for benefit on March 14, 1946. The insurance officer disqualified her from receipt of benefit for a period of six weeks for having voluntarily left her employment without just cause.

On July 9 next she was notified by the local office of employment as an apprentice weaver in a silk mill about 45 miles from L....., at a starting wage of 25 cents per hour, which was reported to be the prevailing rate in the district for that type of work. She refused to apply for this employment because of the low wage, and was again disqualified for a period of six weeks. A court of referees unanimously upheld this disqualification, but permission to appeal was given by the chairman.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The chairman of the court of referees has given permission to the claimant to appeal to the Umpire, and requests an answer to the following question:

"In order to know whether the claimant had just cause in refusing the employment offered at the ..... Co.'

"The court of referees undoubtedly went very carefully into all phases of the problem involved and came to a unanimous decision in the matter. The court was of the opinion that the claimant should have accepted the employment offered, and upheld the disqualification imposed by the insurance officer. In previous decisions I have given in which the chairman has granted leave to appeal under Section 58 of the Act, I have commented as follows:

"A chairman of court of referees should be extremely careful in granting permission to appeal under Section 58 of the Act. A great amount of work is involved in all such appeals, and no appeal to the Umpire should be allowed, unless there are actually special circumstances or principle of importance involved."

"There seems to be no valid grounds for the chairman allowing this appeal and the decision given by the court of referees is in accordance with the facts of the case and with the provisions of the Act; therefore, the appeal is dismissed."

## Case No. CUB-189. (23 December, 1946)

*Held:* That a driver-salesman who had refused to perform extra duties of a light nature, for which he would receive extra remuneration, and who was discharged from his employment in consequence of his refusal, was discharged for misconduct within the meaning of the Act.

The material facts of the case are as follows:

The claimant, a single man, aged 30 years, was employed by a dairy company from December 1943 to May 25, 1946, as a driver-salesman at a salary of \$27 per week. The employer reported that he was dismissed because he refused to obey his employer's order to canvass for new customers, and he appealed to other salesmen to follow his example. The claimant confirmed these reasons, but said that this extra work was not included in his contract of service.

The insurance officer disqualified him from receipt of benefit for a period of six weeks as it appeared that he had lost his employment by reason of his own misconduct. This decision was upheld by a court of referees in a majority decision.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me, it is evident that the claimant was asked to perform certain duties, which he refused to carry out. In addition, in accordance with the findings of the court of referees, he requested certain other employees engaged in the same class of work as himself to follow his example.

"The question resolves itself as to whether the duties he was asked to perform were reasonable or otherwise under the circumstances. It is apparent that these additional duties were very light and that the claimant would receive extra remuneration for the work he was asked to perform. As the work was of a reasonable nature and could be performed by the claimant, a refusal to carry out such instructions amounts to misconduct within the meaning of the Act. The court of referees, which heard the case and went fully into the facts, also had the opportunity of examining the claimant and by a majority decision, they came to the conclusion that he was guilty of industrial misconduct.

"Under the circumstances, I can see no valid reason for interfering with the decision arrived at and the appeal of the claimant is dismissed."

### **Case No. CUB-190. (23 December, 1946)**

**Held:** That a labour dispute has certain characteristics which are well defined and by which it is ascertainable if a dispute is in existence within the meaning of the Act. The two sections of the Act which protect union membership refer only to the right of unemployed persons to refuse employment which would jeopardize their status as union members.

The claimant was employed as a linotype operator by a newspaper publisher, and the material facts of the case are set out in the following decision.

#### **DECISION**

The appeal of the union was dismissed.

"From the facts and submission before me, there is general agreement as to the basic factors underlying the cause of separation from employment of the claimant and those associated with him in this appeal. It is evident that on the morning of the 31st day of May, 1946, the claimants were requested by their employer to perform certain work which they regarded as being contrary to their understanding with the publishers of the B..... The work in question was for another publication where a strike was in progress. The employer insisted upon the work being performed and the claimants were equally insistent and refused to perform the tasks requested with a consequent result that a stoppage of work took place.

"In the initial claim for benefit, the claimant stated that he was separated from his employment due to a labour dispute. The employer, in the separation notice to the Commission, gives the following as the reason for separation:

"Ordered "out" by and ceased work on instructions of ..... union."

"In this appeal to me, there are two questions to consider:

"Firstly: whether the stoppage of work was due to a labour dispute within the meaning of the Act and,

"Secondly: if there was a labour dispute, are the claimants entitled to be relieved of any disqualification under the Act by virtue of Section 32, which reads as follows:

"Notwithstanding anything contained in this Act no insured person shall be disqualified for receipt of benefit by reason only of his

refusal to accept employment if by acceptance thereof he would lose the right:

- (a) to become a member of, or
- (b) to continue to be a member and to observe the lawful rules of, or
- (c) to refrain from becoming a member of any association, organization or union of workers.'

"A labour dispute has certain characteristics which are well defined and by which it is ascertainable if a dispute is in existence within the terms of Section 43 of the Act. A labour dispute is usually preceded by negotiations between the contending parties and there is also an insistence by either party on certain matters affecting the conditions of employment. If the negotiations or the insistence by the parties to the dispute lead to a stoppage of work, then such stoppage would come within the meaning of Section 43 of the Act. A labour dispute is also defined in Section 2(d) of the Act and reads as follows:

'labour dispute' means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not.'

"In the evidence given before the court of referees, Mr. K., who appeared on behalf of the claimants, as well as on behalf of the union, namely the ..... Union, Local ....., makes the following statements, as shown in the transcribed evidence given before the court of referees.

"Page 2—Mr. K.

"We claim we were locked out. They claim it is a strike. We can argue just as strongly in favour of a lockout as they can a strike."

"Page 3—Mr. K.

"I have negotiated agreements with the J..... and B..... for a period of 37 years, and we have never had a strike before."

"On the same page, Mr. K. is further reported as follows:

"We claim it is a lockout and according to our Act it is a lockout, particularly in regard to the B..... We claim that is decidedly a lockout."

"On page 4, ...., chairman of the court of referees commented:

"The strike started in the J....."

"Mr. K.:

"Yes. We still claim it is a lockout."

Many similar statements were made during the course of the hearing before the court of referees by Mr. K., indicating that in his mind, the labour dispute was either a strike or lockout.

"I have referred to certain characteristics which accompany a labour dispute. Amongst others that may be mentioned is the fact that a plant, where a strike occurs, is usually picketed by members of the striking organization. This happened in the present instance and, in

addition, the men who had become separated from their employment and were members of the union were in receipt of strike benefit.

"Taking these factors into consideration, the stoppage of work at the B..... had all the characteristics of a labour dispute; namely the insistence of demands by both employer and employees, concerted action by the members of the union, who became separated from their employment in their collective capacity as members of an organization. The dispute was called a strike and a lockout by both contending parties. The men who were parties to the dispute picketed the plant and were also in receipt of strike benefit from their union, all of which brings the dispute in question within the definition of Section 2(d) and Section 43(a) of the Act. Accordingly, the claimant and those associated with him lost their employment by reason of a stoppage of work due to a labour dispute and, in my opinion, are not entitled to benefit.

"In regards to the second point raised by the claimant, as to entitlement of relief from disqualification under Section 32 of the Act, already quoted, this section must be considered in conjunction with Section 31(b), which states:

"An insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that

(b) he has declined

(i) an offer of employment arising in consequence of a stoppage of work due to a labour dispute."

"Careful perusal of these two sections brings me to the conclusion that they apply only to insured persons who become unemployed and who apply for benefit, or who are already in receipt thereof and who refuse to accept such employment as would jeopardize their rights. This section emphasizes the rights of an insured person to refuse to accept work at such plant or premises where a strike is in progress. It is, therefore, my opinion that the claimants do not come within this category which would entitle them to relief from disqualification under this section of the Act.

"Under the circumstances, I can see no valid reasons for disturbing the decision given by the court of referees and the appeal is therefore dismissed."

#### **Case No. CUB-191. (23 December, 1946)**

**Held:** That, in a labour dispute, the words "grade or class of workers" refer to the industrial classification of the workers, and not to their classification as union or non-union members. A worker who was unable to enter his employer's premises because of the activity of a picket line, and who was directly interested in the labour dispute which caused a work stoppage, was subject to disqualification for so long as the stoppage continued.

The material facts of the case are as follows:

The claimant, employed as a tailor by a clothing manufacturer, was one of a number of employees who were prevented, on August 14, 1946, from entering their place of work because the plant was picketed. It appeared that a stoppage of work caused on August 12 by a labour dispute was in progress, and this claimant and others were disqualified

by the insurance officer from receipt of benefit for as long as the stoppage continued. The court of referees allowed their appeal.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, it is evident that there had been labour difficulties between the company and its employees for a considerable length of time which culminated in the union calling a strike on August 12, 1946. Previous to this, the provincial government had appointed a board of arbitration to investigate the difficulties that had arisen between the contending parties.

"Of the total number of employees, approximately 275, 63 reported for work on the morning of the 12th, the day on which the strike had been called. On succeeding days, the number of employees reporting decreased until finally on or about the 15th of August, work was completely stopped due to the labour dispute. The claimant, according to his statement, was prevented from entering the premises where he was employed due to the pickets that were on duty there on behalf of the labour organization. Following his inability to obtain admission to the premises, the claimant filed a claim for benefit which was disallowed by the insurance officer on the grounds already referred to, but the court of referees overruled this decision and allowed the claimant benefit, stating in their decision that the claimant and those associated with him and who were not members of the union, were not directly interested in nor were they participating in the dispute, nor did they belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage took place.

"The reasons given by the court of referees that it was necessary to differentiate between members and non-members of the union, is not a correct interpretation of Section 43(ii) of the Act. In interpreting this sub-section of 43 of the Act, one cannot differentiate between members and non-members of a union when referring to a grade or class of workers; the industrial classification of the worker and not his labour affiliation must be considered. For instance, if there were a number of persons engaged as machine operators at a clothing plant and some of these insured persons belonged to a union and some did not, they would nevertheless belong to the same grade or class of workers.

"Then the question arises as to whether the claimants in this instance were interested parties according to Section 43 of the Act. In many previous decisions that I have given, I have referred to the question of the employees of the same firm, some of whom are members of the union, whilst some others are not. In CU.-B. 85, under date of the 29th day of May, 1946, I make the following observations in reference to this aspect of the question:

"The fact that an insured person belongs to another union or to no union at all does not "ipso facto" make them parties without an interest in a labour dispute. In this particular instance there can be no doubt of the "interest" the appellant had in the dispute."

This quotation is taken from a case in which the claimant was in a position similar to that in which the claimants are in relation to the union.

"The union had no existing agreement with the ..... Limited. However, the union were no doubt negotiating with the company on behalf of all its employees with the exception of those who were office workers or foremen. According to the submissions made, there were eight persons at the plant not covered by the negotiations that were undertaken by the union on behalf of the employees. None of the claimants are included in the eight referred to.

"At the beginning of August, just prior to the stoppage of work, the company informed its employees that they were ready to grant practically all they requested with regard to salary and working conditions, although they were not prepared to accept all the findings of the Provincial Board of Conciliation, which made a report on the 15th day of May, 1946. In their recommendations, the Board of Conciliation recommended increase in pay for all employees except the eight already referred to. In addition they recommended holidays with pay, as well as other improved working conditions.

"The union was not satisfied because the management refused to rehire several employees, who had been dismissed, and refused to accept union preference. As a result of this dispute, a strike was called and a stoppage of work took place. The claimant and those associated with him therefore belonged to a grade or class of workers that were directly interested in the labour dispute and, consequently, come within the disqualification, as stated in Section 43(a) (ii) of the Act.

"Under the circumstances, the appeal of the insurance officer is allowed and the claimant and those associated with him in this appeal, as per attached list, are disqualified for receiving benefit for the duration of the stoppage of work."

#### **Case No. CUB-192. (23 December, 1946)**

**Held:** That a person who claims benefit under the Act must be prepared to accept suitable employment. A claimant who will accept employment only where none is available, owing to the remote location of his home, has made himself not available for work.

The material facts of the case are as follows:

The claimant, a single man aged 35 years, registered for work as a cook, was employed as a cook's helper in a hotel in M..... from January until June 7, 1946, at a salary of \$80 per month plus room and board. He left voluntarily to go to the hamlet of J..... to care for his aged grandparents. J..... is thirty miles from the nearest centre having a population of any size and 210 miles from the city of M.....

On July 9 he made a claim for benefit and was disqualified for a period of six weeks for having voluntarily left his employment without just cause. On July 22 he was notified of temporary employment as a cook in M....., at a salary of \$140 per month plus room and board. He refused to apply for this situation and was then disqualified for a period of six weeks commencing on July 27, the day following the refusal to apply.

He appealed to a court of referees from these decisions, on the grounds that his salary, (\$80), was too low for a chef of his experience,

and that he had to stay to care for his grandparents until he could make arrangements to move them to a city where he could find work. Meanwhile he was ready to accept any work which would allow him to be at home every night. The court removed the second disqualification.

The insurance officer appealed to the Umpire.

## DECISION

The claimant was found to be not available for work, and the period of disqualification was re-imposed on this basis.

"From the facts and submissions before me it is indicated that the claimant left his employment on his own accord at the W..... Hotel in M..... for two reasons:

"first: he claims that he wanted to be with his grandparents who are old and sick;"

"secondly; because he was not receiving sufficient pay for the type of work he was performing or, in the claimant's words, wages "were too low"."

"On a subsequent date, July 22, the claimant was offered employment at a higher rate of pay, namely, \$140 per month plus room and board, which he refused to accept claiming that he wished to stay with his grandparents at J.....

"The court of referees, which heard the case, stated in their decision that on 'account of the presence of the claimant being indispensable to his grandparents' he was, therefore, entitled to benefit under the provisions of the Act.

"Section 28(iii) of the Act reads as follows:

"The receipt of insurance benefit by an insured person shall be subject to the following statutory conditions, namely:—

(iii) that he is capable of and available for work but unable to obtain suitable employment."

"A person who claims benefit under the Act must be prepared to accept an offer of suitable employment when offered to him and must also be genuinely seeking employment. The claimant states that he is prepared to accept employment in J..... where he is located, but knows fully well that no opportunities of employment are available in the village in which he resides. By making these restrictions, he has very definitely placed himself in the position where he is no longer available for employment, and the insurance officer was justified in disqualifying the claimant for his refusal to accept the employment offered. The claimant is to be commended for his attitude towards his grandparents but he could have taken reasonable precautions to make preparations for their well-being during the several months that he was employed in the city of M..... There is nothing in the submissions to indicate that the claimant followed such a course.

"Under the circumstances, I must consider the claimant, while residing in his present address, as not being available for work and the disqualification of six weeks imposed by the insurance officer is restored and made effective as from the date that this decision is communicated to the claimant."

**Case No. CUB-194. (24 January, 1947)**

**Held:** That a woman, 27 years of age, who left her employment, which paid the accepted rate of pay for the occupation in the district where she was working, on the plea that the salary was too low and that she wanted to live with her parents in a city 115 miles away, had not shown just cause for voluntarily leaving her employment.

The material facts of the case are as follows:

The claimant, a widow, aged 27 years, was employed as a sales clerk from April 6 to September 7, 1946, at a salary of \$15 per week, in a city approximately 115 miles from her parents' home in O..... She made a claim for benefit in O..... on October 3, 1946, stating that she had left her employment voluntarily as her salary was too low and she wanted to work in O.....

The insurance officer disqualified her from receipt of benefit for a period of six weeks, beginning on September 8, for having voluntarily left her employment without just cause. She appealed to a court of referees which removed the disqualification.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was allowed.

"From the facts and submissions before me, it is apparent that the claimant had voluntarily left O....., where her parents resided, to accept a position in N....., a distance of approximately 115 miles, and that the rate of pay, which she was receiving, was the accepted rate of pay for the district.

"As pointed out by the insurance officer, the principle laid down in CU.-B. 107, and on which evidently the court of referees based their decision, is not analogous to the one involved in the present case. In CU.-B. 107, the claimant, who is a much younger person, was residing with her parents and, when the latter returned to their former home, from V....., to H....., a distance of approximately 2,900 miles, she went back with them.

"I feel that in the present instance, the claimant has not shown good cause in voluntarily leaving her employment and that the insurance officer is justified in making the appeal.

"Under the circumstances, the appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

**Case No. CUB-195. (24 January, 1947)**

**Held:** That a salesman, working on a commission basis with a drawing account, was not unemployed during a period when he could obtain no products for delivery against orders on hand, had not separated from his employment, and spent part of each day at his employer's premises in connection with the business.

The material facts of the case are as follows:

The claimant was employed for about nine years as a salesman for a motor car company. He applied for benefit and requested that his

claim be ante-dated to the date of delivery of the last automobile, some four months previous, and gave as his reason for delay that he was advised by the local office that he was not eligible for benefit. When deliveries ceased due to the supply of automobiles being cut off because of a strike at the factory, he continued to draw \$40 a week, first from commissions previously earned, and subsequently from advances against future earnings by way of commissions on the many cars on order which were not yet delivered. The insurance officer considered that the claimant could not be deemed to be unemployed and disqualified him until he fulfilled this condition. At the same time, he notified the claimant that his request for ante-dating could not be allowed. The court of referees, by unanimous decision, allowed the claim and also permitted ante-dating.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"From the facts and submissions, there are two questions for me to determine:

"1. Could the claimant be deemed to be unemployed within the meaning of the Act on June 10, 1946?

"2. If he was deemed to be unemployed, is he entitled to have his claim ante-dated as from that date?

"From the evidence submitted, it is apparent that during the period he claims he has been unemployed, the claimant was receiving by way of remuneration from his employer, the sum of \$40 per week. In addition, he was also visiting the premises daily as shown in the evidence given before the court of referees, wherein it is reported:

"He stated that he was there practically every day answering the telephone and looking after his own interests. A considerable amount of his time was taken up by making excuses for non-delivery of the automobiles that customers had on order."

"Exhibit 6 is a letter from the [employer] written 'To whom it may concern' under date of October 16, 1946, and reads as follows:

"To WHOM IT MAY CONCERN:

The bearer, ..... of ..... is employed by us in our sales department.

This is to certify that ..... works strictly on a commission basis and that the last delivery placed to his credit was on June 10, 1946, due to the ..... strike and their products not being available.

Yours very truly,

.....  
Secretary-Treasurer.

It will be observed from this communication of the claimant's employer that they stated, 'he is employed by us in our sales department.' This was on October 16, 1946. Nowhere in the record of the submissions or in the evidence before the court of referees is there anything to indicate that the claimant had been separated from his

employment. He still regarded himself as being employed by the [employer], in exactly the same way as [they] regarded him as an employee of their company.

"The question of remuneration for cars ready for delivery is a matter entirely between the company and the claimant. The amount of pay received each week, insofar as the Act is concerned, would only affect the category in which the claimant would be placed for contribution purposes. Had his pay been ten dollars per week, then he would have been placed in Class 3 for contribution purposes. Under a correct interpretation of the Act, the claimant, being still under contract of service with the ..... , and not having been separated from employment, should have had contributions made on his behalf by his employer in the usual way on and after June 10, 1946.

"It is obvious that, had he become separated from his employment, the claimant would have lost a considerable amount in commissions, as orders for 300 cars were to his credit. Undoubtedly for this reason, the claimant went down almost every day to his work, which is an indication that he considered himself still employed by the same firm. Therefore, he could not be deemed to be unemployed within the meaning of the Act.

"The court of referees erred when they allowed benefit to the claimant, because the result of their decision permits the claimant to draw a remuneration of \$40 per week, as well as unemployment insurance benefit. This is against the purport and intent of the Act.

"Having come to the conclusion that the claimant could not be deemed to be unemployed within the meaning of the Act, there is no need for me to determine whether the claimant was entitled to ante-date his claim, as under the circumstances the question does not arise.

"Therefore, the appeal of the insurance officer is allowed."

#### **Case No. CUB-197. (24 January, 1947)**

**Held:** That a claimant who is on leave of absence and in receipt of a monthly salary but who is not permitted to accept work during the time he is receiving salary payments pending retirement on pension is not unemployed.

The material facts of the case are as follows:

The claimant, aged 60 years, registered for work as an office clerk, was employed as a bank manager from 1903 to May 31, 1946, when he retired on salary for a year pending payment of pension. He made claim for benefit on June 27, 1946, which was allowed, the facts regarding payment of salary not having been disclosed at that time. He became temporarily employed from August 26 to September 14, 1946, and on September 19 made renewal claim. Under the terms of his contract of service, he was not permitted by the bank to accept work during the time he was receiving salary from them, and his claim was disallowed on the ground that he was not unemployed during the period for which he was claiming. He was disqualified from September 27, 1946 until he proved that he was unemployed. The court of referees unanimously upheld the decision of the insurance officer.

The claimant, with the permission of the chairman, appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me, it is indicated that the claimant retired from the services of the ..... Bank on the 31st day of May, 1946. As a result of his long service, the bank allowed the claimant a year's leave of absence and paid him each month the equivalent amount which he would have received had he still been employed by them.

"Section 33 of the Act reads as follows:

"'An insured person shall not be deemed to be unemployed:

(a) during any period for which notwithstanding that his employment has terminated, he continues to receive remuneration by way of compensation for loss of, and substantially equivalent to the wages he would have received if his employment had not terminated.'

"In this instance, the claimant was actually in receipt of the wages he normally was receiving during the period of his employment with the bank, and there can be no doubt of the correct interpretation which the court of referees has placed upon this section of the Act.

"The claimant, in this instance, is in no different position than an insured person who received a two weeks' vacation with pay and is therefore not entitled to claim benefit under the Act. Had the full facts of the case been disclosed at the time the claimant made his initial claim for benefit on June 27, it is more than probable that the claim would not have been allowed.

"It is my opinion that the claimant cannot be deemed to have been unemployed within the meaning of the Act, on the date on which he made application for benefit, and I see no valid reason for disturbing the unanimous decision of the court of referees.

"The appeal of the claimant is therefore dismissed."

## Case No. CUB-198. (24 January, 1947)

**Held:** That the financial consequence of the loss of employment by reason of misconduct cannot be taken into consideration when adjudicating the claim for benefit. When a person is discharged for misconduct within the meaning of the Act, the provisions of the Act must be applied.

The material facts of the case are as follows:

The claimant lost his employment as an assembler at a ship-building firm because he was caught picking up, without permission, used copper lying on the company grounds, which he sold to merchants in the town. He made claim for benefit and the insurance officer disqualified him for a period of six weeks, on the ground that he had lost his employment by reason of his own misconduct. The court of referees reversed the decision of the insurance officer, being of the opinion that, although justified, the dismissal in itself was sufficient punishment.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, it is an apparent and admitted fact, that the claimant was guilty of a serious breach of the company's rules. He gathered certain waste material, took it off the company's premises and sold it to merchants in the area in which he resided. The fact that the material involved is not of a large value in no way affects the nature of the offence committed by the claimant. The court of referees in their decision state that he was guilty of misconduct within the meaning of the Act and that the company was justified in dismissing the claimant from its services, but felt that he had been sufficiently punished by losing his employment.

"Whilst one can understand the motives of the court of referees in taking the action they did, it does not, however, conform to the principles underlying the Unemployment Insurance Act. When a person is found guilty of misconduct within the meaning of the Act, the provisions of the Act must be applied.

"The court of referees have refused to apply the provisions of the Act in the manner that it was intended, and the insurance officer is fully justified in appealing their decision and asking for the proper application of Section 41(1) already referred to in this decision.

"Under the circumstances, the appeal is allowed and the disqualification of six weeks imposed by the insurance officer is hereby restored as from the date that this decision is communicated to the claimant."

#### **Case No. CUB-199. (24 January, 1947)**

**Held:** That no distinction can be made between employees who receive pay during a recognized holiday ("recognized holiday" as specifically provided for in the Act), and those who do not; both are subject to disqualification from receipt of benefit for the duration of the holiday period.

The material facts of the case are as follows:

The claimant was employed as a machinist by a steel works. On July 27, 1946, there was a stoppage of work due to a shut-down for annual holidays. He made claim for benefit on July 29, and the claim was disallowed as he was deemed not to be unemployed during the holiday period.

A court of referees reversed this decision, holding that the holidays were "recognized holidays" only for those employees who were entitled to holidays with pay. The claimant was not so entitled, and hence did not belong to the grade or class for which the holiday period was a "recognized holiday." It appears that during the 1945 holiday period those who were not entitled to holiday pay were paid unemployment insurance benefit.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, I am asked to decide whether the temporary and partial suspension of work, which took place at the ..... on July 27, was a vacation period within the meaning of the Act. If such was the case, then the claimant is not entitled

to benefit. On the other hand, if the suspension of work and his separation from employment was due to other causes, such as a temporary layoff and was not a vacation period, then the claimant would be entitled to benefit.

"The only actual evidence in this matter on record, is the statement that was posted by the company just prior to the stoppage of work on the 27th day of July, the first paragraph of which reads as follows:

" 'The annual vacation for ..... will be held from July 28 to August 3 for all departments.'

"In the latter part of the notice, it is stated:

" 'We are advised that the Unemployment Insurance Commission will consider any man not entitled to vacation with pay as being out of work through no fault of their own for this period or part thereof.'

"This is an assumption both by the local office of the Unemployment Insurance Commission and by the management of the firm which cannot be accepted, because it is contrary to the purpose and intent of the Act and to the very terms thereof.

"There was either a stoppage of work on account of the annual vacation or there was not. One cannot separate the men who are to receive vacation with pay and those who do not.

"The evidence given before the court of referees indicates many anomalies which arose between the company and the men in regard to those who are entitled to receive vacation with pay, but these conditions of employer and employees' relationship at the plant can in no way affect the interpretation of the Act.

"The Act is quite clear; Section 33 (c) reads as follows:

" 'An insured person shall not be deemed to be unemployed (c) on any day which is recognized as a holiday, for his grade or class or shift in the occupation or at the factory, workshop or other premises at which he is employed unless otherwise prescribed.'

"The temporary suspension of work was undoubtedly a recognized holiday at the factory at which the claimant was employed and the latter also belonged to a grade or class affected by the vacation period. These holidays had been mutually agreed upon both by the company and its employees, but evidently there was some misunderstanding as regards the position of the men in their relation to the Unemployment Insurance Act. Although the employees at the plant may have been paid benefit previously, under somewhat similar circumstances, it does not alter the basic fact that during the time that these men were not working, subsequent to July 27, 1946, they were actually on annual vacation; therefore, they cannot be deemed to be unemployed within the meaning of the Act.

"Whether the employees received pay or not during the vacation period does not alter the meaning of the Act; as already pointed out no distinction can be made between those who receive pay during vacation periods and those who do not. This is a matter entirely between employers and employees to determine.

"Under the circumstances, the appeal of the insurance officer is allowed."

### **Case No. CUB-200. (6 February, 1947)**

**Held:** That a work stoppage caused by a labour dispute at the premises of a newspaper publishing company ceased when the production of newspapers reached approximately 87 per cent of the number of copies produced prior to the work stoppage.

The material facts of the case are as follows:

The claimant and 38 other employees of a daily newspaper received notices of separation from the employer, effective September 9, 1946, on which the reason for separation was shown as "absenteeism-strike." On making claim for benefit on September 13, 1946 this claimant stated that he had been locked out when his employer refused to continue negotiations with the union of which he was a member. These negotiations had been started in November 1945, in connection with the terms of a new bargaining agreement to replace the one which would expire on December 31, 1945. The employer's story was that these employees had stopped work on May 30, 1946, but that they were not discharged at that time because it was hoped that negotiations would be continued. The insurance officer disqualified the claimant on the ground that he had lost his employment by reason of a stoppage of work which was due to a labour dispute.

At a hearing before a court of referees it was claimed by the president of the union that the employment was lost by this claimant and the others who were associated with him in the appeal, because they took part in union activities. The court, on November 13, 1946, confirmed the disqualification imposed by the insurance officer and was of the opinion that the stoppage of work was still in existence on that date.

The union appealed to the Umpire and at the oral hearing admitted that the loss of employment was caused by a work stoppage due to a labour dispute, but submitted that the work stoppage had ceased on September 9, 1946, on which date the claimants were dismissed from their employment.

### **DECISION**

The appeal was allowed as of November 1, 1946.

"The Union was represented by Messrs. W..... and F.....

"Mr. W..... in a written submission, claimed that:

"the principal question to be decided was when a general resumption of work has taken place."

"I am in full agreement with this contention and, therefore, it is essential that whatever facts are obtainable, in reference to the resumption of work at the ....., should be carefully examined, so that a date can be fixed at which it could be claimed there was a substantial or reasonable resumption of operations.

"Section 43(a) of the Act reads as follows:

"An insured person shall be disqualified for receiving benefit—

(a) if he has lost his employment by reason of a stoppage of work, which was due to a labour dispute at the factory, workshop or other premises at which he was employed ..... but this disqualification shall last only so long as the stoppage of work continues.'

"There are many difficulties in the present instance in being able to establish when there was a reasonable or substantial resumption of operations. At the hearing of the court of referees, officials of the company stated that they were still handicapped for lack of men and that only one issue of the paper was being printed as against three prior to the stoppage of work on May 30, 1946.

"Since the decision given by the court of referees, information has been sought in reference to the publication of the [newspaper] and it has been ascertained that about the end of October and the beginning of November, the production of newspapers had reached approximately 87 per cent of the number issued prior to the stoppage of work. In addition, the information obtained indicates that on the 1st day of November, 1946, the company were printing a newspaper of 30 pages.

"Under the circumstances, it can be taken for granted that there was at the plant of the [publishing company] a reasonable and substantial resumption of operations on the 1st day of November, 1946. My decision, therefore, is that the stoppage of work within the meaning of the Act ceased at midnight on the 31st day of October, 1946.

"The appeals of the claimants are allowed, subject to the conditions as stated in the preceding paragraph."

#### **Case No. CUB-201. (10 February, 1947)**

**Held:** That a claimant who had left his employment because of a dispute with another employee, over whom he claimed authority, was rightly disqualified for having left without just cause, as he made no attempt to have his grievance rectified.

The material facts of the case are as follows:

The claimant voluntarily left his employment as a chef in a restaurant, after two weeks' employment, when a dispute arose between him and a waitress. On making claim for benefit he stated that he had left because his orders were not carried out. His employer confirmed this, but said that the chef was not in a position to give orders. The insurance officer disqualified the claimant for a period of six weeks on the ground that he had voluntarily left his employment without just cause. The claimant appealed to a court of referees, which unanimously upheld this decision.

With the permission of the chairman, the claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From this decision of the court of referees, the claimant has been given permission by the chairman to appeal to the Umpire under Section 57 of the Act, but he does not state any new facts in his submission to me.

"From the evidence, it is obvious that the claimant acted in a hasty and arbitrary manner. If the claimant had any grievance at all, he should have used the ordinary procedure generally adopted and consulted those in charge of operating the restaurant. He failed to adopt this ordinary precaution but hastily left his employment. This, very

definitely, brings the claimant within the disqualification as provided for in the Act for those who leave their employment without just cause. The court of referees had the opportunity of examining the claimant and they came to a unanimous conclusion. I see no valid reason for disturbing their decision.

"The appeal is dismissed."

### **Case No. CUB-203. (10 February, 1947)**

**Held:** That a claimant who assaulted his foreman after working hours and outside the employer's premises, because of the latter's report on the claimant's unsuitability for the type of work which he was performing, and was discharged therefor, lost his employment by reason of his own misconduct.

The material facts of the case are as follows:

The claimant was employed as a sand mixer by a manufacturer until October 23, 1946, when he was discharged for misconduct. The employer stated that the claimant held a grievance against his foreman, that he endeavoured to discuss conditions of employment at the plant gate, that the foreman had advised him that this could be done during working hours, and the claimant thereupon assaulted the foreman. The claimant reported that the "disagreement" did not take place on company property or during working hours.

The claimant was disqualified for a period of six weeks, the insurance officer holding that he was discharged for misconduct. A court of referees, by a majority, upheld the decision of the insurance officer, noting that there was no evidence that the grievance which had caused the disturbance had been discussed by the union grievance committee.

The union appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The claimant assaulted his foreman immediately after closing-time and in the near vicinity of the plant. This fact has a material bearing on the case but not necessarily a decisive one. He had been requested by the foreman to talk matters over in the morning which he refused to do but, instead, resorted to violence.

"In the present instance, the main test in order to determine whether this misconduct comes within the meaning of the Act is to enquire into the cause and object of the assault.

"The uncontroverted evidence was that the foreman was attacked because he had, in the performance of his duties, reported the unsuitability of the claimant for the type of work he was engaged in and the claimant did not want a change in the conditions of his employment.

"For these reasons, this misconduct is definitely related to the claimant's employment and comes within the meaning of the Unemployment Insurance Act.

"The claimant has been rightly disqualified from receipt of benefit by the court of referees and I see no valid reason for disturbing their decision.

"The appeal is dismissed."

**Case No. CUB-204. (10 February, 1947)**

**Held:** That work as a cannery helper was suitable employment for a pensioned railway car checker after six months of unemployment.

The material facts of the case are as follows:

The claimant, a married man, aged 65 years, was employed by a railroad company from 1921 to February 24, 1946, as a car inspector at a wage of 89 cents per hour. On the latter date he was retired on superannuation, and on March 11, 1946 made claim for benefit, which was allowed.

On September 16 next he was notified by the local office of employment as a cannery helper at a wage of 62 cents per hour, 8 hours per day, 44-hour week. He refused to apply for this employment, stating that the distance from his suburban home was too far and the cost of transportation too high (48 cents return fare), that he had fractured ribs and could not bend down but was capable of clerical work.

His employment history showed no record of clerical work, and the insurance officer disqualified him from receipt of benefit for a period of six weeks for his refusal to apply. A court of referees dismissed the claimant's appeal.

The union of which the claimant was a member appealed to the Umpire.

**DECISION**

The appeal was dismissed.

"From the facts and submissions, it is shown that the claimant on March 11th, 1946, after he left his home at D..... and almost immediately upon his arrival in the city of V....., made application for benefit which was granted to him as from that date. He was in receipt of continuous benefit until the 16th day of September, 1946, when he was offered employment which he refused to accept.

"In Exhibit 7, I find the following statement, made and signed by the claimant under date of August 19th, 1946:

"'[The claimant] states that he will not accept employment at wages lower than he was receiving with the ..... (88¢ /hr.) and will not accept light labour unless it will pay an equal amount.'

"This statement by the claimant would indicate that he was not anxious to accept the kind of employment offered to him, even though it was at the accepted rate of pay for this class of labour and work he could have performed.

"In previous decisions, I have pointed out that an insured person must be genuinely seeking work and be available to accept suitable employment when offered to him. In the present instance the employment offered was suitable employment within the meaning of the Act and I find no valid reason in this appeal to me which would warrant my interfering with the unanimous decision of the court of referees.

"The appeal is therefore dismissed."

**Case No. CUB-205. (15 February, 1947)**

**Held:** That there is a definite difference between an error of judgment and negligence or failure to comply with an important rule concerning the performance of the duties which a claimant has been hired to perform. Therefore

non-observance by a locomotive engineer of rules relating to the speed of a train, with a resultant collision, constitutes misconduct within the meaning of the Act.

The material facts of the case are as follows:

The claimant was employed by a railway company from 1910 to September 8, 1946. He worked, prior to his discharge from this employment, as a locomotive engineer. The employer stated that he had violated Rule 93 and Special Rule 2, which relate to the speed of a train, and a head-on collision occurred; the claimant's locomotive had, contrary to orders, been travelling at a rate of speed in excess of that set for yard limits, which did not allow sufficient visibility to stop the locomotive before a collision occurred in foggy weather.

Violation of Rule 93 was admitted by the claimant, and he was disqualified for a period of six weeks because he had lost his employment by reason of his misconduct. The claimant appealed from this decision of the insurance officer, stating that the violation was unintentional, and the majority of the court of referees disallowed the appeal, but reduced the period of disqualification to three weeks because of the claimant's previous good record and character.

The union appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From all the facts and submissions before me, it is evident that the claimant was discharged from his employment because, as stated by the employer in Exhibit 2, he was guilty of a violation of the rules during the course of his duties. This resulted in the collision of two trains at a time when the weather was foggy and the vision was somewhat difficult. It is contended that had the claimant exercised the care that he should have, then the collision could have been averted.

"The question for me to decide, therefore, is whether the claimant, at the time of the collision, exercised sufficient care or whether he was negligent to such an extent that he was guilty of misconduct within the meaning of Section 43(c) of the Act.

"It is admitted by the union appealing on behalf of the claimant that there was an 'unintentional violation of the rules of his employment'.

"It is a fact that the claimant was in charge of the locomotive when the accident happened. He also regulated the speed of the train, and therefore cannot disclaim responsibility. From the evidence, it is obvious that the claimant did not observe an important rule concerning the performance of his duties. The rules regulating the speed of trains in railway yards, particularly in foggy weather, cannot be considered as minor rules of secondary importance; they deal with the protection of human life and property. While cases of non-observance of regulations of minor importance might be leniently regarded, the present case is wholly different as there was negligence on account of non-observance of a regulation of primary importance.

"This is a case, not of a mere error of judgment but of non-observance of an important rule concerning operation of trains under certain circumstances. There is a definite difference between an error of judgment and the negligence or failure to comply with the rules already

referred to. The non-observance of the rules of operation by the claimant was such that it brings him within the category of those guilty of industrial misconduct.

"The operating rules governing conditions of employment on the railways provide a well recognized and long accepted procedure for the adjustment of grievances in cases of dismissal, suspension or other disciplinary action. The findings under this procedure, whilst not necessarily binding on the Commission or on the Umpire, cannot be ignored or changed except for good and sufficient cause.

"In the present instance the findings of the grievance committee and the evidence in support thereof are not on file. On behalf of the claimant, it is contended that the rules and regulations governing employment are severe, but it is an accepted fact that these rules and regulations are jointly agreed to and are an accepted condition of employment. The employees on the railways, should their grievances be well founded in relation to the excessive severity of these rules governing employment, ought to direct their request for a change to another authority.

"In his submissions, the claimant has referred to circulars issued by the Commission, known as circulars No. R-4, Insurance Benefit, and No. 3, Insurance Adjudication, under date of January 4, 1946, and April 30, 1946, respectively, dealing with the claims for benefit by railway employees. He is under the impression that these circulars supersede certain sections of the Act.

"The claimant is under a misapprehension in regard to the nature of the circulars issued to officials of the Commission. They contain instructions for officials to follow in dealing with claims and do not and cannot, under any circumstances, supersede the Act itself. Any circular issued by the Commission for the guidance of its officials must be drawn up in conformity with the provisions of the Act. These circulars may be useful to but need not be accepted by the Umpire, when he deals with matters pertinent to these circulars.

"In conclusion, it might be observed that the court of referees went very carefully into the facts and circumstances of the case and came to the conclusion that when the accident occurred, sufficient care had not been exercised and there had been negligence on the part of the claimant.

"Considering all the circumstances, I can see no valid reason for disturbing the decision given by the court of referees, disqualifying the claimant from receipt of benefit for a period of three weeks. The court considered the good record which the claimant unquestionably had for a long number of years and accordingly reduced the period of disqualification from six to three weeks. I am in full accord with this decision of the court.

"The appeal therefore is dismissed."

#### **Case No. CUB-207. (26 February, 1947)**

**Held:** That a claimant who had lost his employment by reason of a work stoppage caused by a labour dispute was not relieved of disqualification merely because he moved to another locality where he made a claim for benefit.

The material facts of the case are as follows:

The claimant was employed at a textile plant when she lost her employment by reason of a stoppage of work due to a labour dispute.

Some time later she returned to her former home in another province and made claim for benefit. The insurance officer ascertained that the stoppage of work had not terminated and disqualified her for so long as the stoppage continued. The claimant considered that, having left the location of the strike-bound plant, and having no intention of returning, she should be relieved of disqualification, and she appealed to a court of referees which, by unanimous decision, reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"From the facts and submissions before me, it is evident that the claimant was separated from her employment on May 31st, 1946, by reason of a stoppage of work due to a labour dispute. It is also evident that the claimant, even though not a member of the union responsible for the calling of the strike 'belonged to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage took place'. Further, there can be no doubt that the claimant had a direct interest in the outcome of the dispute.

"In many previous similar cases, I have ruled that under such circumstances as the one under consideration, a claimant is an interested party to the dispute, as the future working conditions under which he would be employed would be materially affected by the outcome of the labour dispute.

"If the action of the court of referees in this instance was to be made a precedent for future cases, it would mean that any person or number of persons, separated from their employment on account of a labour dispute, could move to an area other than the one where the strike takes place, register for employment and, thereby, be entitled to receive insurance benefit. This would be contrary to the intent and meaning of the Act.

"Section 39(1) states as follows:

"'An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory, workshop or other premises at which he was employed unless he has, during the stoppage of work, become *bona fide* employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation; but this disqualification shall last only so long as the stoppage of work continues.'

"The claimant was still unemployed at the time she applied for benefit on August 7, 1946, as a result of the dispute in which she was an interested party. She should, therefore, be disqualified for so long as the stoppage of work continues.

"The court of referees have erred in the decision they made, as the claimant has not established the right to receive benefit for the period as from August 7, 1946, until such time as the stoppage of work ceased.

"Under the circumstances, the appeal of the insurance officer is allowed."

**Case No. CUB-208. (26 February, 1947)**

**Held:** That the relief from disqualification provided by Section 43 of the Act applies only to refusal to accept employment and not to leaving employment which has been accepted with knowledge of the conditions thereof. (See also CUB-190 and CUB-287.) A compositor who found employment with a publishing company and left voluntarily three months afterwards, claiming that he did not want to act as a strike-breaker and did not realize, when he accepted the employment, what his situation would be in relation to future prospects of work and union membership, was disqualified for having left his employment voluntarily without just cause.

The material facts of the case are as follows:

The claimant worked for six years at a printing plant, and was a compositor's apprentice when he left voluntarily to work as a compositor for a newspaper publishing company in the same city. There had been a stoppage of work due to a labour dispute at the publishing company, but the appreciable stoppage ceased about three weeks before the claimant started the new employment although the union concerned was of the opinion that a strike was still in progress and continued to picket the premises. After working with the newspaper publishing company for three months, he left voluntarily and about three weeks later made claim for benefit, saying that he had left due to a labour dispute. The employer informed the local office that the claimant had left to go into the photographic business with his brother, but had joined the striking union and was receiving striker's pay.

The insurance officer disqualified the claimant for a period of six weeks on the ground that he had voluntarily left his employment without just cause. The claimant appealed to a court of referees and submitted that when he entered his last employment he was not aware that there was a labour dispute in progress, that he did not relish working as a strike breaker, and that he had not joined the union until after he separated from this employment. The court of referees, the chairman dissenting, allowed the claim.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"From the facts and submissions before me, it is admitted that the claimant voluntarily left his employment at the [newspaper publishing company]. The question therefore to decide is whether or not he was justified in doing so.

"The claimant gives as his reasons for separation that he did not want to work as a strike breaker, which might have seriously interfered with his career as a printer. The employer claims that he left his employment 'to go into the photography business', which is not denied by the claimant.

"However, the evidence discloses that when the claimant left C..... printers in O....., where he had worked for six years, to voluntarily accept employment with the [newspaper publishing company], there was a dispute in existence at this newspaper. It is difficult to understand how the claimant was not aware of this situation, being himself a printer and living in O..... Furthermore, during the three months he worked at the [newspaper publishing company], the place was picketed and the newspaper published long accounts regarding

the labour dispute. Under the circumstances, it is unreasonable to suggest that the claimant could have been ignorant of the conditions under which he was employed.

"It is significant that the claimant, as it appears from the submissions, should have left his employment after representations were made to him by the union.

"The reasons given cannot be regarded as just cause for separation from employment, nor can any future consequences of the claimant's own actions be held as entitling him to benefit, as these matters must have been considered by the claimant prior to his acceptance of the employment with the [newspaper publishing company].

"As pointed out by the insurance officer in his appeal, the relief from disqualification provided in Section 43 of the Act 'applies only to refusal to accept an employment and not to leaving employment which has been accepted with knowledge of the conditions thereof.'

"In view of these conclusions, the claimant cannot be held to have shown good cause for having left his employment.

"The appeal of the insurance officer is therefore allowed and the disqualification imposed in the first instance is restored as from the date that this decision is communicated to the claimant."

#### **Case No. CUB-209. (27 February, 1947)**

**Held:** That a claimant had just cause for voluntarily leaving his employment when his employer asked him to perform work which he had not been hired to perform and which, due to inexperience and to inability to obtain proper boots, was dangerous.

The material facts of the case are as follows:

The claimant was last employed as a truck driver by a logging company from August 7 to October 31, 1946. He made claim for benefit on November 15, 1946, giving as his reason for separation that his employer had been unable to keep him working a full week at a time. The employer informed the local office that the claimant had had full-time work and that the only days on which he had not worked were legal holidays or days on which he did not wish to work. The insurance officer disqualified him for a period of six weeks on the ground that he had voluntarily left his employment without just cause.

The claimant appeared before a court of referees and informed the court that he had commenced his employment as a log truck driver but that during the second month he was asked to work on the booms; that in the third month he worked 25 per cent of his time on the booms, although it was becoming increasingly dangerous due to approaching winter and the fact that he had no experience at the work. He had no caulked boots and was unable to buy them at the only store in the locality. The court reversed the decision of the insurance officer and allowed the claim on the ground that there had been a change in the contract of service and that the claimant had just cause for voluntarily leaving his employment.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The facts of the case are not in dispute. The claimant was hired by the ..... Logging Co. Ltd. to work as a truck driver. For considerable periods during the three months he was in their employ, he was asked to do other work to which he was not accustomed and for which he was not properly equipped. The work, according to the claimant, was of a more hazardous nature and his statements in this regard seem to be accepted as correct.

"There is no point of law involved in this case, it is purely a question of fact. The court of referees, which had the opportunity of hearing the claimant in person, went carefully into all the facts and came to a unanimous decision in his favour.

"In view of these circumstances, I see no valid reason for interfering with their decision and the appeal of the insurance officer is dismissed."

### **Case No. CUB-210. (28 February, 1947)**

**Held:** That vacation pay received on termination of employment must be allocated to the day or days immediately following the termination of employment; the Unemployment Insurance Act does not contemplate the receipt by an insured person of wages or compensation, and benefit, at one and the same time; a claimant is deemed not to be unemployed while in receipt of vacation pay.

The material facts of the case are as follows:

On separation from his employment the claimant received for vacation pay the sum of \$19.08 which was equivalent to two days' wages. He filed a claim for benefit which was allowed except for these two days and on appeal to a court of referees, the court by a unanimous decision allowed benefit for them.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, it is obvious that the claimant received vacation pay for two days which, according to the submissions, amounts to \$19.08.

"Section 29(1)(a) of the Act reads as follows:

"29. (1) An insured person shall be deemed not to be unemployed (a) during any period for which notwithstanding that his employment has terminated, he continues to receive

(i) remuneration, or

(ii) compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated.'

"This section of the Act is quite clear and definite in its meaning and there can be no doubt that when an insured person is in receipt of pay or compensation for a period regarded as a holiday or vacation period, such person is not entitled to receive insurance benefit during that period.

"In the Province of ....., there is an ordinance (Ordinance No. 3 revised of the Minimum Wage Commission under the Minimum Wage Act R.S.Q. 1941, C. 164), which allows an employee an annual vacation with pay. In the common practice, until that legislation was

enacted, a holiday was generally a period of rest without pay. In order that the employees should take the advantage of that holiday, the law offers them a compensation which is not only substantially but actually the equivalent to the remuneration they receive while at work.

"For practical purposes and the efficient administration of the Unemployment Insurance Act, it is desirable to compute the day or days immediately following the day of separation from employment as a day or days during which the claimant has received compensation whilst on vacation.

"It was never contemplated under the Unemployment Insurance Act that an insured person should receive wages, or compensation, and benefit at one and the same time.

"Under the circumstances, I have no alternative but to allow the appeal of the insurance officer."

### **Case No. CUB-212. (27 March, 1947)**

**Held:** That a route-salesman who left his employment voluntarily because of the long hours and the amount of walking involved, had not established just cause for leaving; the medical certificate which he produced to substantiate his statements referred to a sprained ankle which he had suffered more than three years before he separated. A medical certificate, in these circumstances, should state the condition of the claimant on the date of separation from employment.

The material facts of the case are as follows:

The claimant was employed by a bakery as a route salesman from September 7 to December 14, 1946. On making claim for benefit, he reported that he had voluntarily left his employment because of the long hours and too much walking. He stated, further, that he had suffered an accident to his ankle in 1944 and that it had been weak since, in support of which statement he produced a medical certificate dated January 13, 1947, stating:

"This is to certify ..... suffered a sprained ankle August 15, 1944."

The insurance officer disqualified the claimant for a period of six weeks on the ground that he had voluntarily left his employment without just cause, and this decision was reversed by a court of referees.

The insurance officer appealed to the Umpire and submitted that the medical evidence furnished by the claimant was insufficient to establish that the injury which he sustained on August 15, 1944 left him with a disability sufficient to warrant his voluntarily leaving suitable employment on December 14, 1946.

### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, it is agreed that the claimant voluntarily left his employment with the ..... limited, S. ...., on December 14, 1946, giving as his reasons that the work was too strenuous for him on account of the fact that on August 15, 1944, he had sprained his ankle and that he was still suffering from the effects. As the claimant was not present in person at the hearing in S. .... it would appear that the only evidence the court of referees had in the

case was the written submission of the claimant and the medical certificate, which stated that the claimant had suffered a sprained ankle on August 15, 1944.

"The medical certificate shows that the claimant had a sprained ankle in August 1944, but does not indicate what his physical condition was at the time he left his last employment. The claimant should have submitted medical evidence to prove that at the time of his separation from employment, he was not in a position to continue his work as truck driver and route salesman.

"In many previous decisions, I have stated in regards to the admissibility of medical certificates that such evidence should give the condition of the claimant at the time of actual separation from employment. In the present case, this principle has not been followed, and I feel that under the circumstances, the claimant has not submitted sufficient evidence to prove incapacity at time of his separation from employment on December 14, 1946.

"The appeal of the insurance officer is therefore allowed and the disqualification imposed by the insurance officer is hereby restored. The claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him."

#### **Case No. CUB-214. (27 March, 1947)**

**Held:** That vacation pay received on termination of employment must be allocated to the day or days immediately following the termination of employment. The Unemployment Insurance Act does not contemplate the receipt of wages or compensation, and benefit, at one and the same time. A claimant is deemed not to be unemployed while in receipt of vacation pay.

The material facts of the case are as follows:

On separation from his employment the claimant received three days' pay in lieu of vacation. He filed a claim for benefit which was allowed except for these three days, the insurance officer being of the opinion that he was not unemployed on those days within the meaning of Section 29 of the Act. He appealed to a court of referees on the ground that vacation credits received at the time of lay-off should not be used as a basis for extending the nine-day waiting period. The court of referees unanimously upheld the insurance officer's decision but granted the claimant leave to appeal to the Umpire.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me, it is admitted that the claimant, on separation from his employment, received three days' pay equivalent to that which he would have received, had he been fully employed.

"The section of the Act dealing with the question before me, namely 29(1)(a), reads as follows:

"29. (1) An insured person shall be deemed not to be unemployed (a) during any period for which notwithstanding that his employment has terminated, he continues to receive

(i) remuneration, or

(ii) compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated.'

"This section of the Act is quite clear and definite in its meaning and there can be no doubt that when an insured person is in receipt of pay or compensation for a period regarded as a holiday or vacation period, such person is not entitled to receive insurance benefits during that period. It was never contemplated under the Unemployment Insurance Act, that an insured person should receive wages, or compensation in lieu of wages, and insurance benefit at one and the same time.

"For practical purposes and the efficient administration of the Unemployment Insurance Act, it is desirable to compute the day or days immediately following the day of separation from employment as day or days during which the claimant has received compensation whilst on vacation.

"Under the circumstances, the claimant cannot be deemed to be unemployed on the 26th, 27th and 28th of November, 1946, the days for which he received payment in lieu of vacation, and I have no alternative but to dismiss the appeal."

#### **Case No. CUB-216. (27 March, 1947)**

**Held:** That when a claimant has the opportunity of remaining in part-time employment he should remain in such employment in the hope of finding other or additional work, instead of leaving this employment, and thus becoming totally unemployed. The period of disqualification may be shorter than six weeks when the employment lost would not have lasted for that period of time.

The material facts of the case are as follows:

The claimant, a married woman, was employed as a comptometer operator and on making claim for benefit reported that she had been hired for a period of 3 to 4 weeks but was kept on for 7 weeks, at the end of which time she was asked to stay 2 or 3 weeks longer, working half days. She thereupon terminated her employment in the hope of finding full-time work. The insurance officer disqualified her for a period of two weeks, being the period of possible continuance of work, on the ground that she had voluntarily left her employment without just cause, and this decision was reversed by a court of referees.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The question to decide is whether the claimant, after having accepted temporary employment, which was on a full-time basis, was justified in leaving that employment when she was asked to stay on for a further period on a half-time basis.

"The claimant has shown very little co-operation with the employment office of the Unemployment Insurance Commission in attempting to obtain employment. In a signed statement by the claimant, it is indicated that when she was offered permanent employment, she refused to take it because she could not give an undertaking to stay permanently

if she accepted, as she anticipated shortly to be assisting her husband in a business they were about to enter into on their own account.

"When the claimant refused to continue in her employment with the ..... Limited, she had very little prospect of obtaining other work. Had she remained on a temporary basis with the same firm, she still would have had ample opportunity of attempting to seek a more permanent employment, had she desired to obtain it, or she could have shown her desire for full employment by registering for such at the employment office of the Commission.

"From the submissions, it would appear that the claimant was not genuinely seeking employment and that she has not shown any valid reasons for leaving her employment, even though it may have been temporary in character. I think it is desirable in a general sense and in the interest of all concerned that, where a claimant has the opportunity of being partially employed, he should remain in such employment in the hope in the meantime of finding other or additional work, rather than to become totally unemployed.

"Under the circumstances, the appeal of the insurance officer is allowed and the disqualification as imposed in the first instance is hereby restored as from the date that this decision is communicated to the claimant."

#### **Case No. CUB-218. (28 March, 1947)**

**Held:** That an insured person in receipt of benefit must be available for immediate call in the event of employment being available for him. A claimant who told the local office that he would not be in the local office area but in the United States on holiday for a two-week period, during which he failed to report to the local office, was not available for work.

The material facts of the case are as follows:

The local office records show that this claimant did not report on his regular reporting day to prove unemployment, due to his absence from the city on a visit to the United States, having advised the local office of his intention. This absence from the jurisdiction of the local office included a period from December 24 to January 3, (the date of his return to the city), but he did not again report to the local office until his regular reporting day, January 7. The question of his entitlement to benefit during this period was referred by the insurance officer to a court of referees which, by unanimous decision, disqualified the claimant from December 24 to January 2, on the ground that he was not available for work.

With the permission of the chairman, the claimant appealed to the Umpire.

#### **DECISION**

The claimant was not available for employment for the whole of the period during which he was absent from his home and in the United States.

"The question for me to decide is whether the claimant, during the time that he was absent from [his home town], could be held to be available within the meaning of the Unemployment Insurance Act.

"The fact that the claimant called at the local office and stated that he was leaving the city for a period of two weeks does not in any way relieve him from the onus of responsibility in proving that he was available for work during the period in question. When he called at the local office to notify them of his intended absence, he should have ascertained what his rights and responsibilities were under the circumstances. An insured person in receipt of benefit under the Act must be available for immediate call in case of employment being offered. The fact that there is little prospect of a person being employed does not relieve him of this responsibility.

"In the present instance, the claimant had gone to S....., in the United States, a considerable distance from his home, without any possibility of him being reached in case the occasion arose. In addition, he also failed to comply with the very necessary procedure of registering as being unemployed during his absence from the city. These conditions attached to receipt of benefit must be complied with by all in receipt of benefit, otherwise the Act could not be administered according to its intent and meaning, as there would be no way of proving one's availability for employment.

"Under the circumstances, I consider that for the period that the claimant was absent from his home and in the United States, he was not available for employment within the meaning of the Act. The appeal of the claimant is dismissed."

### **Case No. CUB-219. (28 March, 1947)**

**Held:** That a claimant is not entitled to the dependency rate of benefit as he but partially supports his mother (old age pensioner) whom he claims as a dependent.

The material facts of the case are as follows:

The claimant, a widower, made claim for benefit at the dependency rate, contending that he supported his aged mother in a self-contained domestic establishment, and was obliged to employ a full-time house-keeper for her. His mother was in receipt of an old age pension of \$25 a month. The claim was allowed but the insurance officer did not approve the application for dependency rate, on the ground that the mother was not wholly dependent upon the claimant within the meaning of the Act, and his decision was upheld by a court of referees.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me, the question to determine is whether the mother of the claimant can be regarded as a wholly dependent person within the meaning of the Unemployment Insurance Act.

"Had it been the intention of the Unemployment Insurance Act to allow dependency benefit to those who partially support a dependent, as defined in Section 31(2)(d), then special provisions would have been made in the Act to allow of such interpretation, as this has been for

special reasons done in regards to the Income War Tax Act. As no reference is made in the Unemployment Insurance Act to partially dependent persons, other than wife, husband and children, the word 'wholly' in the Act must be given its usual meaning.

"Whilst the claimant deserves every consideration for the manner in which he is attending to his aged mother, the Act must be given its proper interpretation as was done unanimously by the court of referees.

"An insured person, when claiming benefit for a dependent, as referred to in Section 31(2)(d), must show that such a person is a 'wholly dependent person' before being entitled to dependency benefit. An aged person, as in the present case, in receipt of an old age pension of twenty-five dollars per month cannot be considered as a wholly dependent person within the meaning of the Unemployment Insurance Act. Therefore, the claimant is not entitled to dependency benefit.

"The appeal is dismissed."

### **Case No. CUB-220. (28 March, 1947)**

**Held:** That a married woman who lives with her husband in an area located at a considerable distance from suitable employment, and who refuses to move to an area where it can be had, is not available for work.

The material facts of the case are as follows:

The claimant left her employment as an employment and claims officer with the Dominion Government to move with her husband to a hamlet located at a considerable distance from the nearest industrial centre. Five months later she made claim for benefit and registered for employment as an employment and claims officer, indicating her secondary occupation to be librarian. In two months' time she was notified by the local office of a position as librarian in a city approximately 275 miles from her home, but she refused to apply stating that, being married, she was not in a position to accept work away from home. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for suitable employment, and also disqualified her on the ground that she was not available for employment, the disqualification to last until she proved that she was available. By a unanimous decision a court of referees removed the first disqualification but, by majority decision, upheld the second disqualification.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me, it is evident that the claimant has refused the employment offered because of the distance away from her home and because of the fact that, being a married woman, she is not in a position to seek work away from home. In her submission, under date of December 18, 1946, and shown as Exhibit 4, she makes the following statement:

"'When I married I did so with the intention of living with my husband in my own home; and I do not consider it would be either

reasonable nor right to leave my husband and my home to seek work in a city with which I am totally unfamiliar.'

"In many previous decisions given on the question of availability, I have indicated that an insured person to be entitled to receive benefit under the Act must be genuinely seeking employment.

"In the present instance, the claimant is a married woman who went to reside in ..... in an area at a considerable distance from where any suitable employment could be found for her. She claims that on account of her married status, she could not leave her husband or her home for any considerable length of time. This in itself is an admission by the claimant that, on account of her married status, she is restricted in her availability to such an extent that brings her within the disqualifications imposed by the Unemployment Insurance Act. Furthermore, after reviewing the facts of the case, I am of the opinion that at the time she applied for benefit on October 4, 1946, in ....., the claimant was not available for work within the meaning of the Act and that she should not have been allowed benefit by the insurance officer.

"Any insurance officer, before allowing a claim for benefit, must satisfy himself that, in addition to the conditions mentioned in section 28 of the Act, the claimant meets the requirements of Section 27 and the burden of proof thereof lies with the claimant that he is:

- "(a) unemployed
- (b) capable of and available for work; and
- (c) unable to obtain suitable employment.'

Whenever the claimant fails to adduce satisfactory evidence to this effect, he is then disqualified from receiving benefit and remains so disqualified until he shows that he is unemployed, capable of and available for work, and unable to obtain suitable employment.

"Under the circumstances, the appeal is dismissed."

#### **Case No. CUB-221. (28 March, 1947)**

**Held:** That a claimant who had been unemployed for many months had not good cause for refusing to accept employment in other than his usual occupation. He should have accepted the employment and should have given it a fair trial.

The material facts of the case are as follows:

The claimant was employed as a heel-trimmer by a shoe manufacturer for approximately five years, at a wage of 79 cents an hour, and separated on April 26, 1946. His claim for benefit was allowed. He secured employment as a heel-polisher for a period of three weeks and had been unemployed again for approximately six months when he was notified of permanent employment as a sole-trimmer at a wage of 90 cents an hour. He obtained an interview with the employer but refused to accept the employment, giving as his reason that he had always worked as a heel-trimmer. The insurance officer disqualified him for a period of six weeks on the ground that he had refused without good cause to accept an offer of employment which was considered suitable. A court of referees by a majority upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me, it is evident that the claimant refused to accept employment offered because in his opinion, the work was of a different nature to what he had been accustomed to in his last previous employments. However, it must be borne in mind that at the time the employment was offered to him, he had been unemployed for many months and had been in receipt of insurance benefit for a period of approximately three months. The work offered to the claimant was at a higher rate of pay than the one he was formerly receiving and was also a work similar to which he was previously performing. The prospective employer had told the claimant that he could very easily become accustomed to the slightly different type of work he was asked to perform because of his lengthy experience in the industry.

"In view of all these facts, the claimant should have accepted the employment offered and given it a fair trial. He refused to follow this course and, therefore, comes under the disqualifications as provided for under the Act. No good reasons have been shown that would warrant my interfering with the decision arrived at by the court of referees and the appeal is therefore dismissed."

### **Case No. CUB-222. (28 March, 1947)**

**Held:** That it is essential to the proper functioning of the Act that decisions of the Umpire, where applicable, should be followed by courts of referees. A married woman with family responsibilities, unemployed for over a year, who refuses suitable employment because it entails shift work, is not available for work.

The material facts of the case are as follows:

The claimant, a young married woman with one child, left her employment as a filing clerk in December 1945, due to illness. She made claim for benefit on October 15, 1946, which was allowed, and on January 15, 1947, she was notified of shift work with a textile manufacturer as a spooler (learner) at 30 cents an hour. She refused to apply for this employment, claiming that shift work was not suitable for her as she could not obtain anyone to care for her child at night. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment. A court of referees, by majority decision, reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed and the claimant was disqualified on the ground that she was not available for work, the disqualification to commence on the date on which the decision was communicated to her and to last until she proved that she was available for work.

"Amongst the submissions, there is a letter dated February 17, 1947, from the chairman of the C..... court of referees in which he states that certain members of the court have indicated their intention of not being bound by the Umpire's decisions.

"Section 62 of the Act reads as follows:

"The decision of the Umpire on any appeal from the court of referees shall be final and not subject to appeal to any court."

"It is desirable for and essential to the proper functioning of the Act that decisions of the Umpire should be followed by the courts of referees when applicable and I hope that having made this reference to the matter, there will be no further occasion for me to do so.

"In the insurance officer's submission to me, he states in part as follows:

"That the claimant was referred to the work in question not as an experienced spooler but as a learner with the result that she had a prospect, within a reasonable time, of qualifying for a considerably higher scale of remuneration.

"That allowance of the appeal by the majority of the court appears to have resulted from their disregard of the applicable sections of the Act and the Umpire's decisions aforesaid to which their attention was drawn in the written submission."

"From the facts and submissions before me, which are admitted, the claimant had been unemployed for over a year and in receipt of benefit for approximately eleven weeks. From the time of her leaving her previous employment with the T..... Co. of M....., she had not reported to any of the offices of the Commission as being unemployed, until the time she filed an application for benefit in the C..... local office on October 15, 1946. It would appear from this fact that the claimant, during the whole of this period, was to all intents and purposes completely out of the labour field.

"In previous decisions, I have stated that an insured person in order to qualify for benefit must be genuinely seeking work and must be in a position to accept suitable employment, when offered, without delay. In my decision dated November 29, 1946, CUB-171, which in some ways is parallel to the present case, I stated as follows:

"An insured person to qualify for benefit, must be genuinely seeking employment and must be available to accept suitable employment without delay when offered.

"In cases where a married woman is a breadwinner of a family, a broad interpretation may be allowed both as to the question of suitability of employment as well as to the question of availability. In the present instance the facts indicate that the household duties of the claimant are of such a nature that they considerably restrict her availability. If claimant had not the responsibility of a mother and housewife, she would, no doubt, have been able to accept the employment offered, but under existing circumstances she is not in a position to do so.

"Having considered all the facts, I regard the claimant as being so restricted in her availability due to her domestic obligations that she cannot be considered as being available for employment."

"From the submissions, it is evident that in the present case it is not only a question of whether or not the employment was suitable, but a question as to the availability of the claimant.

"It would appear that due to the domestic circumstances of the claimant and her responsibilities as a married woman and mother, her availability for employment is considerably restricted.

"When a married woman makes a claim for benefit, she must be considered as a person seeking employment in good faith and in such cases, the insurance officer should be very careful to ascertain if the claimant can comply with the conditions mentioned in the relevant section 27 of the Act, namely: that she proves that she is:

- "(a) unemployed
- "(b) capable of and available for work; and
- "(c) unable to obtain suitable employment.'

"In the present instance, the claimant has been unemployed for over a year during which time it appears from the evidence that she was not genuinely seeking employment.

"It is evident that the claimant has so restricted her availability as to come within the disqualification as imposed by the Unemployment Insurance Act as being 'not available' for employment.

"Under the circumstances I must allow the appeal of the insurance officer and disqualify the claimant from receipt of benefit until she proves that she is available for work and such disqualification to begin on the day upon which this decision is communicated to her."

#### **Case No. CUB-223. (22 April, 1947)**

**Held:** That the Act requires that a dependent brother must be wholly dependent and one who is partially maintained by his mother's allowance cannot qualify as a dependent of his claimant brother.

The material facts of the case are as follows:

The claimant, a single man, aged 17 years, made claim for benefit at the dependency rate, contending that he was maintaining a younger brother, who was seven years of age, in a self-contained domestic establishment. The claimant, with two brothers, resided with his widowed mother who received \$48 a month mothers' allowance, and he was allowed the dependency rate under the Income Tax Act. The insurance officer allowed the claim but did not approve the application for the dependency rate, on the ground that the brother was not wholly dependent on the claimant within the meaning of the Act, as he was being partially maintained under the Mothers' Allowance Act.

The court of referees allowed the dependency rate and the insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions, the question for me to determine is whether the claimant is entitled to a dependency benefit under Paragraph (d) of Sub-Section (2) of Section 31 of the Act which reads as follows:

"31. (2) Where the employed person is a person with a dependent, that is to say

(d) a person who maintains a self-contained domestic establishment and supports therein a wholly dependent person connected by blood relationship, marriage or adoption.'

"From the reading of this sub-section, it is clear that the intention of the Act is to allow dependency benefit for a blood relative, when such person is wholly dependent on a claimant and is not receiving support from other sources.

"In the present instance, the claimant obviously helps to maintain the home with his earnings. However, as the amounts received by his mother under the Mothers' Allowance Act are provided for her dependent children, he cannot be said to be wholly supporting his younger brother. Therefore, he cannot claim dependency benefit under Section 31 of the Act.

"One cannot help but commend the attitude of the claimant towards the members of his family, and I regret that under the wording of the Act, I have no alternative but to allow the appeal of the insurance officer."

#### **Case No. CUB-225. (23 April, 1947)**

*Held:* That a first-aid man was directly interested in a labour dispute because his rate of wages and working conditions were covered by the terms of the bargaining agreement, and he was not relieved from disqualification when he lost his employment as a result of a stoppage of work which was due to the labour dispute.

The material facts of the case are as follows:

The claimant was employed by a mining company as a first-aid man and lost his employment because of a stoppage of work as a result of a labour dispute between the company and a union of which he was not a member. He made claim for benefit and was disqualified for so long as the stoppage of work continued. The court of referees reversed the decision of the insurance officer, being of the opinion that the claimant was a technical employee and therefore was excluded from the bargaining agreement between the employer and the union.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The question to decide is whether the claimant comes under the disqualification as provided for in Section 39 of the Act. This Section reads in part as follows:

"(1) An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory, workshop or other premises at which he was employed ..... but this disqualification shall last only so long as the stoppage of work continues.

(2) An insured person shall not be disqualified under this section if he proves

(a) that he is not participating in, or financing or directly interested in the labour dispute which caused the stoppage of work; and

(b) that he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom are participating in, financing or directly interested in the dispute.'

"From the facts and submissions before me, it is indicated that two other employees were performing the same work as the claimant. Both were members of the union. It is evident that the claimant was eligible to become a member of the union, had he desired to join and was, therefore, included in the bargaining agreement. In fact, his wages were increased from 61 cents to 74 cents per hour under the terms agreed upon between the company and the union.

"Under the circumstances, the claimant was directly interested in the labour dispute and comes within the disqualification of Section 39 of the Act.

"This decision is in accordance with several decisions already given in similar cases.

"The appeal of the insurance officer is allowed and the claimant is disqualified from the receipt of benefit for the duration of the stoppage of work due to the labour dispute."

#### **Case No. CUB-228. (23 April, 1947)**

**Held:** That a workman who was considered by his employer to be the instigator of a petition asking for extra pay for overtime work, and who was discharged therefor, was not discharged for misconduct as the employer failed to prove his allegation.

The material facts of the case are as follows:

The claimant, a single man, aged 40 years, was employed as a plastic fabricator at a salary of \$37.40 per week from April 1, 1945 to October 19, 1946. He made a claim for benefit on October 29, and stated that he had been discharged for cause when he refused to work four hours' overtime at the hourly rate of pay after having been told that anyone who refused to do this work would be discharged.

The employer reported that the claimant was discharged for misconduct, as he was the instigator of a petition asking for time and a half for the additional four hours' work. This was refused and he insisted on canvassing the employees to leave the job. He refused to discontinue canvassing, and was escorted from his place of employment by the police.

The insurance officer disqualified him from receipt of benefit for a period of six weeks beginning on October 20 because he was of the opinion that the claimant had been discharged for misconduct. In a majority decision a court of referees, before which the claimant and the employer appeared, upheld the insurance officer's decision, although the employer said that his report, as noted above, was correct, but also admitted that he had learned afterwards that the claimant was not the instigator of the petition.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, the question to decide is whether the claimant at the time of his discharge from his employment was guilty of misconduct within the meaning of the Act.

"According to the evidence, the firm in question had asked its employees to work four hours overtime. Evidently, there was a certain amount of dissatisfaction caused by the fact that no extra pay was allowed for the overtime period. A petition was circulated amongst the employees which the claimant signed. Because he was one of the older employees of the firm and engaged in a sort of supervisory capacity, he was asked to present the petition to the employer. For this reason, he was considered by the employer as the instigator of the petition and was instantly discharged from the service of .....

"It is a usual practice in most industries to give extra pay for overtime. Very often, the employees bring their grievances to the notice of their employer by way of a signed petition which is presented by one of the oldest employees.

"In decision CU.-B 134, I have stated as follows:

"'In several previous decisions dealing with similar question, I have ruled that where misconduct is given as a cause for separation from employment, such misconduct must be proved by the parties who make the allegations. Misconduct cannot be assumed, it must be conclusively proven before a claimant can be disqualified from receipt of benefit.'

"In the present case, the evidence is of a highly conflicting and contradictory nature. In fact, it has not been proved that the claimant was the instigator of the demand for extra pay. Under the circumstances, it is fair to conclude that it has not been shown to my satisfaction that the claimant has been guilty of misconduct within the meaning of the Act.

"The appeal of the claimant is allowed and the disqualification for a period of six weeks is removed."

### **Case No. CUB-229. (23 April, 1947)**

**Held:** That drinking liquor while on the job, after having been warned to discontinue this practice, constitutes misconduct within the meaning of the Act. A claimant who was discharged from his employment for such misconduct was rightly disqualified, even though his employer subsequently re-hired him.

The material facts of the case are as follows:

The claimant was employed as a stevedore until November 30, 1946, when he lost his employment and reported that he had been "drinking on the job". The employer stated that he had been dismissed because of drinking on the job, that it was the fourth offence, and that he had been warned previously on three occasions. The claimant was disqualified for a period of six weeks because the insurance officer was of the opinion that he had lost his employment because of his misconduct.

A court of referees allowed the appeal, because the claimant had been re-hired by his previous employer, and the court considered that this re-hiring constituted an admission by the company that previous offences by the claimant were being overlooked.

The court was of the opinion that drinking on the job was not misconduct as no evidence was produced to show that this was a breach

of the contract between the employer and the employee. The court found that the claimant had consumed liquor while working.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"It is admitted that the claimant had been warned three times for having taken drinks while on duty and that notwithstanding these three previous warnings, he had taken two drinks when he was discharged from his employment.

"Under the circumstances, I must disagree with the findings of the court of referees and rule that the claimant was discharged on account of his own misconduct.

"The appeal of the insurance officer is, therefore, allowed and the disqualification imposed in the first instance is restored as from the date that this decision is communicated to the claimant."

## Case No. CUB-231. (23 April, 1947)

*Held:* That a claimant who walked off the job after having had an argument with his superior, without attempting to have any grievance rectified, and who was refused work when he reported on the following day, had left his employment voluntarily without just cause.

The material facts of the case are as follows:

The claimant, married and 48 years of age, was employed as a restaurant cook from April 3, 1946 to January 9, 1947, at a salary of \$35.00 per week. He made a renewal claim for benefit on January 23, and stated that he had left his employment voluntarily after having had an argument with the chef. The insurance officer disqualified him from receipt of benefit for a period of six weeks for having voluntarily left his employment without just cause.

On appealing to a court of referees the claimant repeated his story about having had an argument with the chef, and also said that he had reported for work on January 10, when the chef told him that he was "through". By a majority decision, the court confirmed the insurance officer's decision.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me, there can be no doubt that the claimant left voluntarily his employment on January 9, 1947. If he thought he had been unfairly treated, instead of leaving his employment, he should have taken up his grievance with his employers. He failed to do so.

"The court of referees had the opportunity of hearing the claimant in person and they upheld by a majority decision the disqualification of six weeks imposed by the insurance officer. I do not see any valid reason to interfere with their decision.

"The appeal is dismissed."

**Case No. CUB-232. (23 April, 1947)**

**Held:** That a claimant who refused to apply for suitable employment away from his home area because of domestic circumstances, the prospect of employment in his home area being practically nil, was not available for employment.

The material facts of the case are as follows:

The claimant, married and 25 years of age, was employed as a truck driver by a fish dealer from April 15, 1946 to December 11, 1946, at the rate of \$3.16 per day. His postal claim for benefit, made on December 13, was allowed. On December 20, 1946, the claimant was notified of employment as a pulp wood cutter at the prevailing rate of \$3.00 per cord, to last for the duration of the winter, ten hours per day, sixty hours per week, transportation paid by the employer. His employment history showed previous woods experience.

On his refusal to apply for this work, the insurance officer disqualified him from receipt of benefit for a period of six weeks, from January 8, 1947. The claimant appealed to a court of referees, stating that he had broken his leg four years ago, that it was sore and he could not walk in snow. He also stated that he could not leave his home area because he could not leave his wife alone with a small baby during the winter months. The claimant's home was in a remote area where the likelihood of finding employment during the remainder of the winter months was very small. The court found that he was not available for work, and disqualified him from receipt of benefit until such time as he would become available.

The claimant appealed to the Umpire.

**DECISION**

The appeal was dismissed.

"Though the court of referees has agreed unanimously on this very question, the chairman of the court granted leave to appeal to the Umpire because he wanted to know 'if the claimant is to be considered available for employment'.

"In many previous decisions, dealing with permission to appeal to the Umpire, (C.U.-B.113, C.U.-B.163, C.U.-B.176, C.U.-B.188, C.U.-B.193, C.U.-B.202) I have pointed out that according to section 57(c) (ii) of the Act, leave to appeal to the Umpire should be granted only where there is a principle of importance involved or where special circumstances are shown.

"There is no point of law involved in this case; it is a question of fact only. The court of referees, no doubt, gave careful consideration to all the circumstances of the case and came to the unanimous conclusion that the claimant was not available for employment within the meaning of the Unemployment Insurance Act.

"The claimant in his submission to me, which is a duplicate of his application to the chairman for leave to appeal, has not stated any evidence which has not been already considered by the court of referees. Under the circumstances, I do not see any valid reason to interfere with their decision.

"The appeal is dismissed."

**Case No. CUB-233. (23 April, 1947)**

**Held:** That a claimant's belief that she could not get along with a prospective employer, whose brother had previously discharged her from his employ, is not just cause for refusal to apply for suitable employment.

The material facts of the case are as follows:

After six weeks' unemployment the claimant, a married woman, aged 33 years, refused to apply for a situation in suitable employment in her usual occupation, because she had previously been discharged from employment by the brother of the prospective employer. She stated that she could not get along with the latter, and was disqualified by the insurance officer for a period of six weeks. This decision was upheld by a majority decision of a court of referees.

The claimant appealed to the Umpire.

**DECISION**

The appeal was dismissed.

"From the facts and submissions before me, the question to decide is whether the claimant had good cause to refuse to apply for the employment notified to her on January 30th, 1947.

"The claimant was referred to a position in the same line of work that she was accustomed to and at a salary which was the prevailing rate of pay in the district. She failed to follow the instruction given to her by an officer of the Commission and refused to apply for the employment offered on account of personal reasons.

"The court of referees had the opportunity of hearing the claimant in person and they came to the conclusion that, under the circumstances, she had not shown good cause for refusing to apply for the work offered.

"There is no point of law involved in this case, it is one of fact only. I do not see any valid reason to interfere with the decision of the court of referees.

"The appeal is dismissed."

**Case No. CUB-234. (24 April, 1947)**

**Held:** That an insured person in receipt of benefit must be available, and prepared to accept immediately suitable employment when offered. A claimant who insists on working only in the area in which she resides and where no work is available has so restricted her availability that she should be disqualified as being "not available" for employment.

The material facts of the case are as follows:

Claimant voluntarily left her employment as a factory worker in order to be married and moved with her husband to a small village in a rural area. One month later she refused to apply for suitable factory work in a town 71 miles distant from her home as she required work within a reasonable commuting distance. The local office reported that the work was located in the nearest town where factory work was carried on. The insurance officer disqualified her on the ground that she was not available for work, the disqualification to last until she

proved that she was available. By majority decision, a court of referees upheld this decision.

The claimant appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"From the facts and submissions before me, the main question to decide is whether the claimant was available for work within the meaning of the Act on December 28th, 1946.

"The evidence discloses that the claimant voluntarily left her employment on November 29, 1946, in order 'to be married'. She went to reside subsequently in S..... with her husband. S..... is a small village with a population of a few hundred where there is not any likelihood of obtaining employment. Work was offered to the claimant in G....., at approximately 71 miles from where she resided, which is stated to be the nearest place where factory employment could be obtained. She refused to accept it on account of her domestic responsibilities.

"In many previous decisions, dealing with the question of availability (C.U.-B.128, C.U.-B.171, C.U.-B.217, C.U.-B. 220) I have stated that an insured person in receipt of benefit must be available, genuinely seeking work, and prepared to accept immediately suitable employment when offered.

"In this instance, it is apparent that the claimant in insisting upon working only in the area in which she resided and where no work was available had so restricted herself in her availability for employment as to come within the disqualification imposed by the Act. I see no valid reason to interfere with the majority decision given by the court of referees and the appeal is dismissed."

#### Case No. CUB-238. (25 April, 1947)

**Held:** That a claimant must be deemed to be self-employed who, after the purchase of a farm, made farming his main and only means of livelihood. The activities which are inherent in the farming business are performed all the year round.

The material facts of the case are as follows:

On filing his claim for benefit the claimant reported that until the end of the previous month, October, 1946, he had worked on his own account as a farmer, and stated that he had a farm of 64 acres on which he cultivated tobacco. He had 6 cows, 1 horse, 2 pigs and 12 hens and it took him 2 hours daily to perform his chores, early in the morning and around 6 p.m. In another statement he said that 50 acres of his land were tillable and 10 non-tillable. The insurance officer was of the opinion that the claimant could not be deemed to be unemployed, and disqualified him until he proved fulfilment of this condition. The court of referees allowed the claimant's appeal.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The question which must be answered is whether the claimant is self-employed.

"The evidence shows that the claimant worked as a farmer's helper from May, 1944 to September, 1944. He then was employed as an inspector for the ..... from September 1944 to March 1945. On this latter date he left voluntarily his employment because 'he was tired'. It is indicated that the claimant had purchased a farm on which he went to reside and work immediately upon separation from employment. On April 17, 1946, he filed an initial claim for benefit reporting that he was out of work since November, 1945. An extension of the two-year period was granted and the claimant was allowed benefit as from April 17, 1946 to May 21st, 1946, when he resumed his work on his farm. On November 21st, 1946, he filed a renewal claim for benefit.

"From these facts, it is evident that the claimant, on separation from his employment with the ..... and after the purchase of a farm, made farming his main and only means of livelihood. The activities inherent to the farming business are performed all the year round on the claimant's farm by the claimant, and, for his own profit. Therefore, there can be no doubt that the claimant is engaged in business on his own account and must be deemed to be self-employed.

"Having come to this conclusion, there is no need for me to decide if his earnings exceed an average daily profit of \$1.50 or not. Nevertheless, it is to be noted that according to the figures supplied by the claimant himself, his earnings are well in excess of \$1.50 a day.

"The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit until and unless he becomes unemployed within the meaning of Section 27(1)(a) of the Act."

### **Case No. CUB-239. (7 May, 1947)**

**Held:** That a benefit year can not be established for a claimant who has made no contributions since the establishment of his last benefit year.

The material facts of the case are as follows:

The claimant made claim for benefit, which was allowed. Five months later he became self-employed painting and doing odd jobs. When he found himself without work eight months later, he made claim for benefit but a benefit year was not established by the insurance officer as he did not have 60 days' contributions to his credit since the commencement of his first benefit year. The court of referees unanimously upheld the decision of the insurance officer.

The union of which the claimant was a member appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"Though the union concerned, following their own request, were granted on the 17th of March 1947 an oral hearing before the Umpire, they have not availed themselves of the opportunity and this appeal must be disposed of without any further delay.

"Section 28(1)(a)(ii) reads as follows:

"The right of an insured person to receive insurance benefit shall be subject to the following conditions (in this Act referred to as "statutory conditions") namely:

(a) that contributions have been paid in respect of him while employed in insurable employment

(ii) in the case of each benefit year except his first, for not less than sixty days since the commencement of his immediately preceding benefit year."

"There is no dispute, either as to fact or law. The claimant could not show any contributions since the commencement of his last benefit year and, consequently, did not meet the conditions stated in Section 28(1)(a)(ii) of the Act.

"Therefore the unanimous decision of the court of referees is upheld and the appeal is dismissed."

#### **Case No. CUB-240. (7 May, 1947)**

**Held:** That work as a bookkeeper, at the prevailing rate of pay in the district, was suitable employment for an experienced bookkeeping-machine operator who had been unemployed for nearly twelve weeks, there being no bookkeeping machines in the claimant's home town.

The material facts of the case are as follows:

The claimant, a married woman, aged 22 years, gave an employment history of six years as a bookkeeping-machine operator when she made a claim for benefit on January 6, 1947 in the small town of L..... She had previously worked as an office clerk and bookkeeper from August 19 to November 30, 1946, at a salary of \$95.00 per month, and was laid off due to a shortage of work. Her claim was allowed.

There were no bookkeeping-machines in L....., and on February 18, 1947, she was notified of employment of two months' duration as a bookkeeper at the prevailing rate of \$20.00 per week. The hours of work were from 9 a.m. until 6 p.m., except on Wednesdays and Saturdays, when quitting time would be 1 p.m. and 10 p.m. respectively. This employment was in a retail store in L....., and presumably the bookkeeper would have to work somewhat later than the quitting hours quoted above.

The claimant interviewed the prospective manager, but refused to accept the employment because she wanted a larger salary and she was not satisfied with the working hours. For this refusal she was disqualified from receipt of benefit for a period of six weeks as from February 21. A court of referees, by a majority decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The question to decide is whether the employment offered to the claimant on February 18, 1947, was suitable in the circumstances and whether she had good cause to refuse it.

"Subsection 3 of Section 40 of the Act reads as follows:

"'After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers, or failing any such agreement, than those recognized by good employers.'

"The claimant had been unemployed for nearly 12 weeks and in receipt of benefit for over a month when she was offered employment with W..... Co. It is indicated that it was work at the prevailing wages in the district. The claimant felt that on account of her special training, she could command a better position and a better salary; that the long hours would interfere with her married life. Consequently, she refused this offer of employment. The evidence discloses that she had also refused, the previous week, another position, involving night work, with the B..... Company.

"According to a further submission, under date of April 5th, 1947, there are no bookkeeping machines in L..... and there are no opportunities there for the claimant to find employment in her special line of work. Since she had been unemployed for nearly three months, when the position at W..... was offered to her, I find that, under the circumstances, it was not unsuitable by reason only that it was employment other than her usual occupation and at wages lower than she previously received. She should have accepted this employment, even though it was temporary, with the hope of eventually improving her situation.

"The decision of the court of referees is upheld and the appeal is dismissed."

#### **Case No. CUB-241. (7 May, 1947)**

**Held:** That 72 hours since the last claim day should not be, in all cases, the maximum period allowed a claimant to ask for any remaining benefit days, as there is no provision which states the exact period of delay applicable to such cases. Each case must be dealt with on its own merits. A delay of four weeks was unreasonable when the claimant became re-employed but had ready access to the local office.

The material facts of the case are as follows:

The claimant worked as a carpenter for a period of approximately three and one-half months and the day following his separation from employment made claim for benefit, which was allowed.

He reported to the local office on February 6, 1947, to prove unemployment for the six preceding working days. On February 13, his next claim day, he did not present himself to sign the unemployment register and nothing was heard of him until March 5, 1947, when he filed a renewal claim for benefit, declaring that he had been working from February 10 to March 4, 1947. He requested payment of benefit for February 6, 7 and 8, stating that he had been unable to report personally due to his hours of work and that it did not occur to him to tele-

phone or write the local office. He stated further that he had understood that it was the employer's obligation to report to the local office that he had been hired.

The insurance officer disqualified the claimant for the days in question because he had not proved that he was unemployed and the court of referees unanimously upheld this decision.

The chairman of the court granted the claimant leave to appeal to the Umpire.

## DECISION

The appeal was dismissed.

"One of the main requirements under the Unemployment Insurance Act is for a claimant to prove that he is unemployed (Section 27(1) (a) of the Act). In order to discharge this onus and to remain eligible for receipt of benefit, he must attend the local office as directed, sign the unemployment register and be ready to furnish further evidence that he is or was unemployed, if required (Benefit Regulations, Section 5).

"In this case, the claimant failed to report on the appointed date to prove unemployment for the six previous working days. A few weeks later, he filed a renewal claim for benefit, saying that he had been temporarily employed and he requested payment of benefit for three of these six days. When asked why he had delayed in claiming benefit for the said three days, he stated that he thought it was up to the employer to report that he had been hired and that it did not occur to him to get in touch with the local office.

"The claimant's reason for his failure to sign the unemployment register cannot be accepted as valid. Even if the employer was obliged, at the time, according to National Selective Service Regulations, to report that he had hired the claimant, this does not excuse the said claimant's neglect in looking after his own interest. He was within easy access of the local office and could certainly have reported by phone, letter or otherwise. In cases of this kind, there must be some onus of responsibility upon an insured person to ascertain as to his rights and duties. The Unemployment Insurance Act has now been in force for several years and all claimants should be well acquainted with the procedure to be followed when claiming benefits.

"In this instance, along with the court of referees, I find that the delay of four weeks before registering is unreasonable under the circumstances.

"However, I cannot agree with their opinion that 72 hours since his last claim day should be, in all cases, the maximum period allowed a claimant to ask for any remaining benefit days. There is no provision, either in the Act or in the Regulations, which states the exact period or delay to which a claimant may be entitled in such cases. No hard and fast rule can be established as each case must be appreciated on its own merit and according to the circumstances.

"The appeal is dismissed."

## Case No. CUB-243. (28 May, 1947)

**Held:** That a single girl, 27 years of age, and unemployed for four months, was not justified in refusing suitable employment away from her home town.

The material facts of the case are as follows:

The claimant, a single woman, aged 27 years, registered for work as a fountain girl, was last employed as such by a restaurant, receiving 30 cents an hour, from August 3, 1945 to October 12, 1946, when she became separated from her employment due to a reduction in staff. She made claim for benefit on October 15, 1946, which was allowed.

On February 18, 1947 the claimant was notified of permanent employment as a doffer learner at a textile mill in a city located approximately 75 miles from the town where she resided. The rate of pay offered was  $37\frac{1}{2}$  cents an hour for ten hours of work per day. She refused to apply for this employment, stating that she did not wish to work outside of her home town.

The insurance officer disqualified the claimant for a period of six weeks commencing February 19, 1947, on the ground that she had without good cause refused or failed to apply for a situation in suitable employment.

From this decision the claimant appealed to a court of referees on the ground that her parents would not permit her to accept employment away from home and the court unanimously allowed the claim.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"From the facts and submissions, it is indicated that the claimant had been unemployed and had received benefit for approximately four months when she was notified of a permanent position at V..... The employment offered involved work of a different nature from that she had been previously performing but required no particular experience. The salary, in addition to being at the prevailing rate in the district, was higher than the wages she had previously received. The claimant, who resides with her parents at S....., some 75 miles from V....., refused this offer of employment on moral grounds. The records reveal that, in November 1946, she also refused an offer of employment, at S....., in her usual occupation.

"Any insured person who is receiving unemployment insurance benefit must be genuinely seeking work and prepared to accept immediately suitable employment when offered. In this case, I do not consider that the claimant has proved that serious domestic circumstances were retaining her in S..... and prevented her from accepting suitable employment in V..... The claimant is 27 years of age and if she must or desires to work, she has to adjust herself to the requirements of our industrial economy. Moreover, there is no evidence that the moral grounds advanced as a basis for her refusal of employment at V....., are justified.

"For these reasons, I have to reverse the decision of the court of referees and allow the appeal of the insurance officer. The claimant is disqualified for a period of six weeks as from the date on which this decision is communicated to her."

#### Case No. CUB-244. (28 May, 1947)

**Held:** That voluntary separation in anticipation of a work stoppage caused by a labour dispute did not relieve a claimant of disqualification for so long as the stoppage of work continued.

The material facts of the case are as follows:

The claimant, a single man, aged 19 years, was employed by a copper mining company as a labourer from November 6 to November 21, 1946, at an hourly wage of 65 cents. On making a claim for benefit on January 7, 1947, he reported that he had left his employment voluntarily before the strike, and that he was not a member of the union. The employer reported that he had "quit on account of strike".

A stoppage of work due to a labour dispute took place at the mine on November 22, 1946, and it was evident that the claimant's wages and conditions of work were likely to be affected by the new collective bargaining agreement which would be the result of current negotiations. A benefit year was established as of January 7, but the claimant was disqualified from receipt of benefit for so long as the stoppage of work continued, as it was still in effect on that date. It appeared that the loss of employment was due to a work stoppage caused by a labour dispute in which the claimant was directly interested.

The claimant appealed to a court of referees on the grounds that (1) he was not an employee of the company when the strike was declared, (2) he left because he did not wish to have anything to do with the strike, (3) he did not belong to the union and had never contributed to it, (4) he had not picketed the mine, and (5) he was now at his home which was a distance of several hundred miles from the mine.

The court of referees, by a majority decision, set aside the insurance officer's decision, and disqualified the claimant for a period of six weeks as from November 22, 1946, for having voluntarily left his employment without just cause. The court's reasoning was that the claimant, having been forced to choose between disqualification for an indeterminate period on account of the work stoppage caused by the labour dispute, and disqualification for a maximum period of six weeks for having voluntarily left his employment without just cause, had chosen the latter, and that, since it had proved more advantageous to him, he should not be deprived of the advantage.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, the claimant himself admitted that he left his employment on the day before the strike and in anticipation of the strike. It must, therefore, be considered that his ground for leaving employment is the stoppage of work due to a labour dispute, and consequently, the disqualification referred to in Section 39(1) applies.

"I have already dealt with the point at issue in case CUB-157 to which the court refers in its decision. In another case, CUB-222, I stated as follows:

"'It is desirable for and essential to the proper functioning of the Act that decisions of the Umpire should be followed by the courts of referees when applicable and I hope that having made this reference to the matter, there will be no further occasion for me to do so.'

"The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for the duration of the stoppage of work."

### **Case No. CUB-245. (28 May, 1947)**

**Held:** That a claimant, engaged in business on his own account, is not unemployed during a temporary lull.

The material facts of the case are as follows:

The claimant made claim for benefit on December 26, 1946, stating: "I am the owner of a garage which has been operating since September 1945. As my income is rather low during the winter months, . . . I hereby make application for benefit." The insurance officer disqualified him as he had not proved that he was unemployed. A majority decision of a court of referees sustained the disqualification.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"I have to decide in this case if, at the time of his application for benefit, the claimant proved that he was unemployed within the meaning of Section 27(1)(a) of the Unemployment Insurance Act.

"From the facts and submissions before me, the claimant is the owner of a garage where he works on his own account since September 1945. On December 26, 1946 he made an application for benefit, giving as reason that his income was rather low during winter months.

"It is shown in these submissions that the garage of which the claimant is the owner, was opened to the public on the date on which he filed his application for benefit. The claimant stated that he had no employees and that he himself was looking after the efficient management of his business. It is therefore evident that the claimant was self employed and was working on his own account on December 26, 1946, and that he could not be deemed to be unemployed within the meaning of Section 27(1) of the Act.

"The court of referees justly stated that it was not necessary to consider the amount of the income that the claimant could receive from the operation of his garage. As soon as an insured person under the Act enters into business on his own account and thereby becomes self employed, he places himself outside the scope of the unemployment insurance plan for the duration of his self employment. He cannot then draw any benefit for this period, no matter what his volume of business may be.

"For these reasons, the decision of the court of referees is maintained and the appeal is dismissed. The claimant is disqualified from receipt of benefit as from December 26, 1946, until and unless he becomes unemployed within the meaning of Section 27(1)(a) of the Act."

### **Case No. CUB-246. (29 May, 1947)**

**Held:** That a claimant is not deemed to be unemployed for a period during which he is on compensatory leave of absence and continues to receive remuneration (civil servant on leave with pay pending final separation).

The material facts of the case are as follows:

The claimant had been employed for a period of approximately eight months as a canal labourer when he was laid off on account of navigation being closed, but the employer stated that he would remain on the paylist for another two months for statutory leave and overtime work during the past season. He was disqualified by the insurance officer for the two months during which he would receive salary. The court of referees upheld the disqualification for a period of 12 days, for which period the claimant received vacation pay, but allowed the claim for the remainder of the two months' period.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions, the question to be decided in this case is whether the claimant is entitled to unemployment insurance benefit from December 15, 1946, date on which his statutory vacations were terminated, till February 3, 1947, date on which his name was removed from the employer's payroll.

"The claimant is engaged in seasonal work for the ..... It is indicated in his contract of service that he receives wages based on a seven-day week (56 hours) during the navigation season. However, there is provision for compensatory leave for the work performed on statutory holidays or on Sundays, and this leave is granted him only following the closing of navigation and in addition to his annual vacations.

"Briefly, by reason of the nature of his employment, the claimant passes through three various stages during a year. During the first stage, namely, from the opening till the closing of navigation, he works on the .....Canal. During the second stage, from the closing of navigation till the termination of his compensatory leave, he is not working but is nevertheless retained on the employer's payroll. During this stage, the employer keeps his insurance book, he is credited with annual leave with pay and also with additional months for superannuation purposes in the proportion of the length of this compensatory leave. The third and last stage extends from the termination of his compensatory leave till the opening of navigation, during which period he is unemployed and is entitled to benefit.

"From the facts and submissions, there is no doubt that the claimant, under his compensatory leave and even though his work was completed, continued to receive a remuneration within the meaning of Section 29(1)(a) of the Act, from December 15 till February 2 inclusive. The claimant cannot therefore be deemed to be unemployed for this period and, consequently, he is not entitled to benefit.

"For these reasons, the decision of the court of referees must be modified and the disqualification imposed in the first instance by the insurance officer is restored.

"The appeal is granted."

**Case No CUB-247. (29 May, 1947)**

**Held:** That employment is not unsuitable merely because the hours of work have been changed, by agreement between the employer and the union, from a 5 p.m. to 11 p.m. shift to alternating shifts, 7 a.m. to 3.30 p.m., and 3.30 p.m. to 12 p.m. The claimant should have adjusted her domestic circumstances to allow her to work the changed hours, as there was no prospect of employment during the evening only.

The material facts of the case are as follows:

The claimant, aged 40 years, a married woman with two children, registered for work as a twister tender, was last employed as such by a textile company at a wage of 47½ cents an hour from October 8, 1941 to January 3, 1947. She made claim for benefit on January 13, 1947, stating that she had left voluntarily as she was unable to work shifts. By agreement between the employer and the union, the 5 p.m. to 11 p.m. shift had been abolished and two shifts of 7 a.m. to 3.30 p.m. and 3.30 p.m. to 12 p.m., to be worked alternate weeks, had been established.

The insurance officer disqualified the claimant for a period of six weeks as from January 4, 1947 on the ground that she had not just cause for voluntarily leaving her employment.

From this decision the claimant appealed to a court of referees before which she appeared, together with the business agent of the union to which she belonged, and the court unanimously allowed the claim.

The insurance officer appealed to the Umpire from the decision of the court of referees, stating in part:

"The court, while finding that the claimant had established just cause for leaving, held that she should immediately thereafter have been directed back to the same employment under the altered working hours. This is tantamount to a finding that the changed working conditions were suitable for the claimant and is inconsistent with the court's finding that just cause for leaving was established."

## DECISION

The appeal was allowed.

"The question to decide is whether the claimant has shown just cause for voluntarily leaving her employment on January 3, 1947.

"According to the submissions, the ..... Ltd. had created a special shift work during the war in order to hire married women and alleviate the manpower shortage. On January 7, 1947, they reverted to morning and evening shifts to be worked alternate weeks. The claimant, who alleged that she cannot work during the morning shift, on account of domestic circumstances, left voluntarily her employment.

"The new hours of work were agreed upon by the union and the company, no doubt, to accommodate the majority of the employees at the plant. If the claimant wished to remain in the labour field, she should have adjusted her domestic circumstances accordingly as the evidence indicates that there is no longer any prospect of employment on a permanent evening shift basis in the C..... area. Had any unemployed person been offered employment of the same kind, as that held by the claimant at the ..... Ltd., and under the same circum-

stances had refused, he would have been deemed to have refused suitable employment within the meaning of the Unemployment Insurance Act.

"For these reasons the claimant must be considered to have left voluntarily her employment without just cause. The court of referees erred in its decision and the appeal of the insurance officer is allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

### **Case No. CUB-253. (30 May, 1947)**

**Held:** That temporary employment as a labourer at a wage of 66 cents per hour was suitable employment for a temporarily unemployed powderman whose wage as such was 72 cents per hour, who had been unemployed for more than five weeks and whose usual employment would not be resumed for about five weeks.

The material facts of the case are as follows:

The claimant, who had been employed as a powderman at a quarry at a wage of 72 cents an hour, had been unemployed for over five weeks when he was notified of employment as a labourer, which would have lasted about a month, at a wage of 66 cents an hour. Transportation would have been provided to and from town. He refused to apply because he did not have transportation between the town and his home, a distance of  $4\frac{1}{2}$  miles. The local office reported that when the claimant had been employed at the quarry he had been able to arrange transportation to and from town. The insurance officer was of the opinion that the claimant was not available for work and disqualified him for so long as this condition continued. The claimant appealed to a court of referees and, before the case was heard, made the further statement that if he had been offered suitable employment in or around town where he was formerly employed, he would have found means of transportation, but that the job offered to him was not in his line of work. In view of this statement, the insurance officer requested the court to consider also the question as to whether or not the claimant had without good cause refused to apply for a situation in suitable employment, and the court allowed the claim.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, the question to decide is whether the claimant had good cause to refuse to apply for the employment notified to him on February 8, 1947.

"The evidence discloses that the claimant had been temporarily unemployed for over five weeks and was on benefit since January 9, 1947, when he was offered employment for a month or so, as a labourer at 66¢ an hour. According to the submissions, he was not likely to be rehired in his former employment as a powder man until March 15, 1947. He refused the employment offered mainly because, in his opinion, the work was below the standard of a man of his experience and background.

"It is established that the temporary situation offered to the claimant was within his capabilities. The wages were at the prevailing rate

of pay in the district and only slightly lower than his previous earnings. Daily transportation was to be provided from the town where his former employer is located. If he had accepted this temporary work, he would in no way have jeopardized his opportunity of returning with the ..... Quarries.

"As already stated, the claimant had been unemployed for over five weeks, on benefit for a month and not likely to be rehired in his former occupation before five weeks or so when this temporary employment was offered to him. Under the circumstances, I consider that paragraph 3 of Section 40 of the Act should apply:

"'After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.' (Sec. 40(3)).

"Therefore, the claimant must be deemed to have, without good cause, refused to apply for a situation in suitable employment. The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him."

#### **Case No. CUB-255. (30 May, 1947)**

**Held:** That a claimant who was notified of suitable employment in her registered occupation, after 2½ months' unemployment, should have applied for the employment in order to ascertain its suitability instead of assuming otherwise.

The material facts of the case are as follows:

The claimant, who had been employed as a baker's helper at a salary of \$17 a week, was notified, after 2½ months' unemployment, of work in her registered occupation (seamstress) at a wage of \$12.50 a week, the prevailing rate of pay for the district. She refused to apply for the situation, stating that she now wished to have bakery work. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment, and a court of referees upheld this decision.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The evidence discloses that the claimant had filed a claim for benefit on January 23, 1947, registering as a seamstress. She was offered work as such on February 7, 1947. The claimant refused to apply for this employment, because she believed it was work at piece rate; she had previously been employed on such a basis as a seamstress and had found her earnings insufficient. According to the placement officer, the salary offered was at a minimum rate of \$12.50.

"This is a factual case; there is no point of law involved. The court of referees heard the claimant and came to the conclusion that she should have applied for the employment in question in order to ascertain its suitability. Under the circumstances, I do not see any valid reason to interfere with their decision.

"The appeal is dismissed."

### **Case No. CUB-256. (30 May, 1947)**

**Held:** That in insisting upon accepting work only within the limits of an area where no work is obtainable, a claimant cannot be deemed to be available for work, and has, in fact, withdrawn from the labour field.

The material facts of the case are as follows:

The claimant, married, aged 29 years, was employed as an office clerk by the Dominion Government at a salary of \$1020 per annum from October 10, 1945 to May 31, 1946. She was separated from this employment by a work shortage. On June 28, 1946 she made a postal claim for benefit which was allowed. In the meanwhile she had moved, with her husband, to the small village of F.....

On January 24, 1947 the local office notified her of employment as a bobbin girl in a cotton mill situated 30 miles from F....., on alternating shifts, hours 7 a.m. to 3.30 p.m., and 3.30 p.m. to 12 p.m. The rate of pay was 30 cents per hour, reported to be the prevailing rate for the district. The claimant refused to apply for this employment as it would mean separation from her husband. She was disqualified because the insurance officer was of the opinion that she was not available for work. A court of referees allowed the claimant's appeal from this decision.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"The evidence discloses that the claimant has been out of work for nearly 8 months and on benefit for 7 months. During the whole of that period, she has not been able to find employment either in F..... or in the vicinity. Furthermore, according to the submissions, the prospects of finding work in that district are very remote. F..... is a small village with a population of about 400.

"The claimant was offered employment in C..... at about 30 miles from her residence, which she refused to accept on account of domestic circumstances. Her husband works in F..... and she does not wish to leave the village. Although the claimant's refusal to leave F....., in view of her domestic circumstances, was quite understandable, it must be borne in mind that when a married woman claims benefit under the Unemployment Insurance Act, she must show that she is capable of and available for work, genuinely seeking but unable to find suitable employment.

"It is evident that in insisting to accept work only within the limit of an area where there is none available, the claimant has restricted her sphere of availability to such an extent that she cannot be deemed to be

available for work within the meaning of the Act and that she has, in fact, withdrawn herself from the labour field on account of her domestic circumstances.

"The claimant, therefore, is disqualified from receipt of benefit until and unless she proves availability under Section 27(1)(b) of the Unemployment Insurance Act, such disqualification to begin on the day upon which this decision is communicated to her."

"The appeal of the insurance officer is allowed."

#### **Case No. CUB-257. (30 May, 1947)**

**Held:** (1) That each claim where the question is one of capability or availability when related to pregnancy must be considered on its own merits. The physical condition, willingness to work, the degree of capability and the nature of employment must be considered. (2) A conclusive medical certificate filed by the claimant that she was unable to work is acceptable evidence upon which to base a disqualification.

The material facts of the case are as follows:

The claimant left her employment as a hotel waitress because she was pregnant and was advised by her doctor to find work which would not require her to do so much walking. She made claim for benefit seven weeks later, stating that she would be able to work for about two months more, and a week afterward produced a medical certificate to the effect that she was unable to work at that time. The insurance officer referred the claim to the court of referees, which disqualified the claimant on the ground that she was not capable of nor available for work, the disqualification to last until she proved fulfilment of these conditions.

The chairman granted the claimant leave to appeal to the Umpire in order that guidance might be obtained on the question of availability for work during the latter part of the pregnancy period.

#### **DECISION**

The appeal was dismissed.

"No hard and fast rule can be laid down on the subject mentioned by the chairman of the court as each case must be considered on its own merit; in the light of all the circumstances relative to the physical condition of the claimant, her willingness to work, the degree of her capability and the nature of the employment.

"In this particular case, the claimant has produced conclusive medical evidence that she was unable to work on February 25, 1947, to substantiate her reasons for having left voluntarily her employment. The court of referees has accepted this evidence and consequently has disqualified the claimant for not being capable of work within the meaning of Section 27(1)(b) of the Act.

"I do not see any valid reason to interfere with their decision. The appeal is dismissed and the claimant is disqualified from receipt of benefit until and unless she proves capability within the meaning of the Act."

#### **Case No. CUB-258. (30 May, 1947)**

**Held:** That one who receives his salary equivalent for three months after separation is not deemed to be unemployed during this period.

The material facts of the case are as follows:

The claimant was employed to January 31, 1947, as a grain buyer at a salary of \$100.00 per month, and made claim for benefit on February 1, 1947. His last employer reported, "Elevator sold. We are paying him \$100.00 per month for February, March and April for past services". Payment of benefit was suspended as the claimant was deemed not to be unemployed for the three months during which he would receive payments of \$100.00 per month. An appeal to a court of referees was dismissed.

The claimant was granted permission to appeal to the Umpire.

## DECISION

The appeal was dismissed.

"The remuneration or compensation must be paid for a given period during which the claimant, under the terms of the Unemployment Insurance Act, is deemed to be employed notwithstanding that his employment has terminated.

"In this case, although the claimant has actually ceased to be employed he still, in fact, receives his wages or salary, in the form of a bonus, for a given period during which, according to the provisions of the Act, he is not entitled to receive benefit.

"In previous decisions (CUB-210 and 214) I pointed out that it was never contemplated, under the Unemployment Insurance Act that an insured person should receive wages, or compensation in lieu of wages, and insurance benefits at one and the same time.

"Under the circumstances the claimant cannot be deemed to be unemployed for the months of February, March and April, 1947 and he is not entitled to receive benefit for that period.

"The appeal is dismissed."

## Case No. CUB-259. (10 June, 1947)

**Held:** That a claimant who had moved her home some distance from her place of employment and subsequently found it impossible to get to work because of road conditions, had just cause for leaving her employment voluntarily, but was not available for work.

The material facts of the case are as follows:

On making claim for benefit on January 9, 1947, the claimant said that she had left her employment, which was located in a town situated approximately twenty miles from her place of residence, because she was unable to get to work on time due to road conditions. The insurance officer disqualified her for a period of six weeks on the ground that she had voluntarily left her employment without just cause. She appealed to the court of referees and in her submission stated that due to her husband's state of health it had been necessary for them to move to the country the previous December, and that because of the amount of snow which had fallen it was impossible for her to work so far away from home. She had two children of school age and must be at home either in the day or in the evening. She also stated that on some days the roads had been too

bad for even the postman to get around. In view of this statement of the claimant, the court of referees was asked by the insurance officer to consider whether she was available for work on the date on which she made claim for benefit and the court, before which the claimant appeared, allowed the claim.

The insurance officer appealed to the Umpire.

## DECISION

The claimant had just cause for voluntarily leaving her employment but was not available for work.

"Two questions arise.

"Did the claimant without good cause voluntarily leave her employment?

"The facts indicated that she had good cause to leave her employment.

"Was the claimant available for work on the date upon which she filed her claim for benefit?

"The claimant stated: 'If you could give me work of any kind in this district I would be very grateful'.

"According to the evidence the opportunities for work in the immediate vicinity of the claimant's home are so remote that she cannot be considered as having been available on the date she filed her claim.

"The decision of the court of referees is, therefore, upheld insofar as the cause for leaving employment is concerned but it is modified as to the claimant's availability.

"The claimant is disqualified from receipt of benefit until and unless she proves that she is available for work within the meaning of Section 27(1)(b) of the Act, such disqualification to begin on the day upon which this decision is communicated to her."

## Case No. CUB-262. (26 June, 1947)

**Held:** That a claimant who has set himself up in business and who spends his time working at that business or soliciting orders, is not unemployed.

The material facts of the case are as follows:

The claimant, registered for work as a translater, was employed as such from October 9, 1945 to November 19, 1946 and his claim for benefit, made on November 26, 1946, was allowed. On February 18, 1947 the local office of the Commission reported that approximately six weeks prior to that date the claimant had stated that he contemplated doing translations and would rent office space for the purpose, and that he had since stated that during these six weeks he had worked only three days, i.e., the 6th, 12th and 13th of February. He also stated that the work which he was doing could be done outside or after office hours and that he was available for suitable employment. He submitted a statement which indicated that he had laid out a total of \$255.76 for office rent, advertising, etc., for the months of January and February, and that his total income so far was \$16.50 for the three days' work. Subsequently, he reported that he had worked for three more days, i.e., the 19th, 21st

and 22nd of February, earning for these days a total of \$22.25. He again maintained that he was available for work at any time.

The insurance officer disqualified the claimant from receipt of benefit as from February 11, 1947, on the ground that he was not unemployed within the meaning of the Act, but was engaged in business on his own account, the disqualification to last until he proved that he was unemployed. The claimant appealed to a court of referees, stating in his submission that his expenditures up to March 11, 1947 were \$334.98. His income was \$102.25, leaving a net loss of \$232.73. He appeared before the court and informed the members that he was either present all day in the office which he had set up as a translation bureau or out seeking orders. The court, by a majority decision, upheld the decision of the insurance officer, being of the opinion that if a person "embarks in the ordinary way on an undertaking, whether it be translating or otherwise, he is generally deemed to be following an occupation for remuneration or profit even though, for the time being, the business shows no realized profits".

The claimant appealed to the Umpire.

#### DECISION

The appeal was dismissed.

"I have carefully examined all the facts and submissions of the case and there is no doubt in my mind that the claimant is engaged in business and works on his own account and therefore, cannot be deemed to be unemployed within the meaning of the Act.

"In decision CUB-245, I stated as follows:

"As soon as an insured person under the Act enters into business on his own account and thereby becomes self employed, he places himself outside the scope of the unemployment insurance plan for the duration of his self employment. He cannot then draw any benefit for this period, no matter what his volume of business may be."

"I agree with the decision of the court of referees and the appeal of the claimant is dismissed."

#### Case No. CUB-263. (26 June, 1947)

**Held:** That a claimant who has accepted work at a wage lower than the prevailing rate, with a knowledge that there would be no increase, should have some assurance of being able to secure other work immediately, before voluntarily leaving his employment.

The material facts of the case are as follows:

The claimant, aged 68 years, registered for work as a cleaner, was employed by a saddlery company from October 14, 1946 to February 22, 1947, at a wage of 45 cents an hour. When he made claim for benefit on March 6, 1947, he reported that the work was too heavy for the wages which he received, that he never received more than \$19.75 a week, that he could not live on less than \$20 a week, and consequently had left his employment in order to find work with more remuneration. The insurance officer disqualified the claimant for a period of six weeks on the

ground that he had not shown just cause for voluntarily leaving his employment.

The claimant appealed to a court of referees, submitting that he had commenced work at 45 cents an hour but had been promised a higher wage if his work was satisfactory, that he had had no complaints about his work but had not received an increase in wages, although he had asked for 60 cents an hour. The employer stated that the claimant was aware when he accepted the employment that 45 cents an hour was the highest rate of pay he would receive, that he appeared to be quite satisfied and had given no reason for leaving.

The court of referees unanimously allowed the appeal of the claimant and removed the disqualification imposed by the insurance officer, considering that the prevailing rate of pay for the type of work in which the claimant was engaged was 50 cents an hour, their decision being based on the principles laid down by case No. CUB-63.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The question to decide in this case is whether the claimant had just cause to voluntarily leave his employment.

"The evidence indicates that the claimant had, for special reasons, accepted work as a labourer at a salary of 45c per hour which is 5c less than the prevailing rate of pay in the district. He alleges that his reason for accepting work at this salary was the promise of an increase of pay if his work proved satisfactory. After four months of employment he voluntarily left his position alleging that his wages were too low for the heavy work he was doing.

"The court of referees, upon its finding that the salary paid to the claimant was not at the prevailing rate of pay in the district for the type of labouring he was engaged in, removed the disqualification imposed by the insurance officer under Section 41(1) of the Act.

"It seems that the court of referees may have overlooked an important aspect of the case: whether the wages paid to the claimant were reasonable in his own particular case, taking into consideration his age and his physical limitations for work.

"The claimant knew, when he was hired, the conditions under which he was going to work and the salary he could expect to receive. There is no evidence that he did not receive fair treatment from his employer nor that, if he had any grievances, he took any step to have them remedied, nor has the claimant proved that an increase of pay had been promised to him by his employer.

"Under the circumstances the claimant, having agreed to work under certain conditions, which were observed by the employer, was not justified in leaving his employment, without having some assurance of securing other work which he could immediately accept.

"I wish to point out that the court of referees has given to decision No. CUB-63 an erroneous interpretation.

"For these reasons, the decision of the court of referees is reversed and the appeal of the insurance officer is allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date upon which this decision is communicated to him."

### **Case No. CUB-264. (26 June, 1947)**

**Held:** That when an insured person enters into business on his own account and thereby becomes self-employed he places himself outside the scope of the unemployment insurance plan for the duration of his self-employment. The period of self-employment continues even on days when he happens to be idle and he cannot draw any benefit during the whole of that period, no matter what his volume of business or his remuneration therefrom may be.

The material facts of the case are as follows:

The claimant, formerly employed as a mechanic, set himself up in business, operating a garage, in February 1946. He registered for employment as a welder on December 23, 1946, and made claim for benefit on January 20, 1947, requesting that his claim be antedated to the date of his registering. As he had no contributions to his credit in the immediately preceding two years, he applied for an extension of the two-year period, which was granted. Antedating of his claim was also approved from January 19, 1947 to December 23, 1946. On February 13, 1947 the claimant informed the local office that his business consisted of repairing and welding farm machinery and that due to abnormal weather conditions he had no work to do, but merely went to the garage daily to look after the heating of the building.

The insurance officer disqualified the claimant as from December 23, 1946, on the ground that he had not proved that he was unemployed within the meaning of the Act but was engaged in business on his own account, the disqualification to last until he proved that he was unemployed. The claimant appealed to a court of referees, before which he appeared, and the court unanimously allowed the claim.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, the claimant, since February 1946, is the owner of a garage where he works on his own account, repairing and welding farm machinery. He applied for benefit on January 20, 1947, on the ground that he had no business or work to do due to the abnormal weather conditions.

"Cases as the present one where the question of self-employment is raised must be appreciated on their own merit, taking into consideration all the circumstances shown by the evidence.

"The evidence discloses that, in fact, the claimant's business was completely curtailed for a period of approximately three months due to weather conditions. But, it also discloses that it never was the intention of the claimant to wind up his business. As soon as the weather permitted, he resumed his work.

"When an insured person under the Act enters into business on his own account and thereby becomes self-employed, he places himself out-

side the scope of the unemployment insurance plan for the duration of his self employment. The period of self employment continues even on days when he happens to be idle and he cannot draw any benefit during the whole of that period, no matter what his volume of business or remuneration therefrom may be.

"This decision is in accordance with decision CUB-245 given in a similar case.

"For these reasons, the decision of the court of referees is reversed and the appeal of the insurance officer is allowed. The claimant is disqualified from receipt of benefit until and unless he becomes unemployed within the meaning of Section 27(1) (a) of the Act."

#### **Case No. CUB-265. (26 June, 1947)**

**Held:** That a tabulator operator, unemployed for eighteen months, who had not been hired as a clerk by an addressograph and multigraph company because of her remark that she wished to return to her former employer, was properly disqualified for having failed to accept an offer of suitable employment.

The material facts of the case are as follows:

The claimant, a married woman, was last employed by a Crown company as a tabulator operator at a salary of \$80 a month. She made claim for benefit a year after separating from her employment, and six months later, on March 25, 1947, was notified of two situations in suitable employment. The first one was permanent full-time employment as a clerk and trainee with an addressograph and multigraph company at a salary of \$75 a month. The second one was temporary employment as a sales clerk in a variety store, the hours of work being from 12 noon to 5.30 p.m. and the rate of pay 36 cents an hour. She refused to apply for the first position because the salary was too low and any increase would depend upon the number of plates which she could produce per week, which would be the equivalent of piece work, and she stated that she was not capable of that type of work. She refused to apply for the second position because it was part-time and the wages were not sufficient.

The claimant submitted a medical certificate dated December 4, 1946, stating that due to physical disabilities she was unable to perform work, such as clerking, which would necessitate her being on her feet for lengthy periods of time.

The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused or failed to apply for, or failed to accept a situation in suitable employment. The claimant appealed to a court of referees, before which she appeared. In her appeal she stated that she had applied for employment with the addressograph-multigraph company but had been found unsuitable by the employer. The court, by a majority decision, upheld the decision of the insurance officer, basing its findings to a great extent on a statement made by the prospective employer in a letter addressed to the local office, to the effect that he would have been willing to hire the claimant had she not informed him that she wished to return to her former employer.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"According to the evidence, the claimant was notified of two offers of employment.

"As regards the offer of employment as a sales clerk, in view of the medical certificate produced, I am of the opinion that she had good cause to refuse it.

"As regards the other offer of employment, the first question to determine is whether or not the claimant refused to accept the position of clerk and trainee with ..... Multigraph Company.

"The court of referees, which had the opportunity of hearing the claimant, decided that, in fact, she refused this offer of employment. From the nature of the evidence before me, I have no valid reason to disagree with this finding of the court.

"The next question to determine is whether this employment was suitable within the meaning of the Act.

"Paragraph 3 of Section 40 reads as follows:

"'After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers, or failing any such agreement, than those recognized by good employers.'

"According to the submissions, it was work at the prevailing rate of pay in the district. The claimant had been many months unemployed and had failed to re-establish herself in the occupation she usually followed. Under the circumstances, I consider that Section 40(3) must apply in this case. The claimant, therefore, is deemed to have refused without good cause an offer of suitable employment.

"The decision of the court of referees is upheld and the appeal of the claimant is dismissed."

### **Case No. CUB-266. (26 June, 1947)**

**Held:** That employment in her usual occupation involving evening shift work is suitable for a married woman with domestic responsibilities, who has been unemployed for a considerable length of time.

The material facts of the case are as follows:

The claimant, registered for work as a clerk, was last employed as a clerk at a salary of \$90.00 a month from January 28, 1946 to August 31, 1946, when she voluntarily left her employment to be married. She made claim for benefit on October 1, 1946, which was allowed. On March 20, 1947, she was offered employment with her last employer as a clerk at a wage of 60 cents an hour, the employment to last three months. It was shift work, either from 7 a.m. to 3 p.m. or from 3 p.m. to 11 p.m.

The claimant refused to accept this employment because her husband did not approve of her working at night, and she stated that she

desired a position with regular office hours. The local office commented that the claimant had been referred to several employers but had been refused work on account of her marital status. The insurance officer disqualified the claimant for a period of six weeks, on the ground that she had without good cause refused to accept a situation in suitable employment. The court of referees, by unanimous decision, allowed the claim.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"There is no dispute as to the facts of the case.

"The claimant had left her employment on August 31, 1946, to be married. A month later, on October 1st, she filed a claim for benefit which was allowed. On March 20, 1947, after having been on benefit for nearly six months, she was notified of temporary employment in her usual occupation, but involving evening shift work. The salary was higher than the one she received in her previous employment and above the prevailing rate of pay in the district for this kind of work. The claimant refused this offer of employment, taking the stand that the hours of work were not suitable on account of her domestic circumstances.

"The evidence discloses that it is difficult for married women to obtain work in the claimant's district. She, herself, had been unsuccessfully referred to several employers in the course of her unemployment. Therefore, if she was genuinely seeking work, she should have been prepared to accept immediately suitable employment when offered.

"As to the claimant's objections to working evening shifts, it is quite customary in many industries in all parts of the country to have alternate day and night working shifts. In view of the length of time she has been unemployed, I do not consider that the claimant has given any valid reason for refusing employment merely on the ground that it involved evening shift work.

"For these reasons, I disagree with the finding of the court of referees and their decision is reversed. The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date upon which this decision is communicated to her."

#### Case No. CUB-267. (26 June, 1947)

*Held:* That a claimant who is capable of and available for work of a light nature has good cause for refusing to apply for a type of work which a physician has certified as not within the claimant's capability because of a surgical operation. (2) That the subsequent production of a medical certificate in this case is not a new fact but merely corroboration of a fact already considered by the court of referees.

The material facts of the case are as follows:

On October 2, 1946, after two months' unemployment, claimant, a married woman, whose usual occupation was that of hairdresser, was referred to work as a grocery clerk. When she refused to apply for the situation the insurance officer disqualified her for a period of six

weeks for refusing to apply for suitable employment, and this decision was upheld by a court of referees. The claimant subsequently submitted a medical certificate dated November 23, 1946 to the effect that she was unable to do any manual work. The court reheard the case but refused to accept the certificate as a new fact which was in existence at the date of its previous decision, and confirmed the disqualification. At a later rehearing, at the request of the insurance officer, the court unanimously upheld this decision.

The claimant then asked permission of the chairman to appeal to the Umpire, submitting a new medical certificate dated February 7, 1947 stating that she was unable to do strenuous work such as that of grocery clerk, but was able to work as a dry goods clerk or hairdresser. The chairman granted leave to appeal to the Umpire, on two grounds:

"1. In order that it may be decided by the Umpire whether a claimant, who gives his reason for refusing employment as physically incapable, should be declared not available.

"2. In order that it may be decided by the Umpire whether a medical certificate, as the one produced by the claimant, be judged as a new fact and thereby justifying the revision or modification of the decision already rendered."

## DECISION

The appeal was allowed.

"When the nature of a claimant's physical incapacity is such that there is no reasonable probability for him to obtain or perform any work, he must be considered as being not capable of nor available for work within the meaning of Section 27(1)(b) of the Act.

"The medical certificate which, in this case, was submitted to the court of referees, in order that they reconsider their first decision was not a new fact but was new evidence to substantiate the claimant's allegation in her appeal to the court.

"The two questions which were submitted are of a theoretical nature; yet a decision must have some practical bearing.

"From the facts and submissions, I must conclude that the claimant, although unable to perform heavy work as a result of a surgical operation, is capable of and available for work of a light nature; that the employment offered was not suitable.

"For these reasons the decision of the court of referees is reversed and the appeal of the claimant is allowed."

### **Case No. CUB-270. (27 June, 1947)**

**Held:** That work as an upstairs maid in a hotel was suitable employment for a single woman, aged 25 years, unemployed for six months, who had last been employed as a factory worker.

The material facts of the case are as follows:

After approximately six months' unemployment, the claimant, a single woman aged 25 years, whose registered occupation was payroll clerk or sales clerk, but whose last two periods of employment were in factory work, refused to apply for a situation as an upstairs maid in a hotel. The salary was \$18.00 per week, which was the prevailing

rate, for a working week of six days from 9 a.m. to 5 p.m. She gave as her reason that her father did not approve of her working in a hotel. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment, but a court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The question to decide is whether the claimant, without good cause, refused to apply for a situation in suitable employment.

"The evidence discloses that the claimant had been unemployed for a period of approximately six months, except for an interval of four days, when she was offered employment as a maid in a hotel. According to the submissions, the salary was at the prevailing rate of pay in the district for that kind of work. The claimant refused the employment because her father objected to her working in a hotel.

"It is admitted in the submissions that the Hotel ..... was an establishment of good standing. Therefore, there is no evidence that the moral grounds advanced as a basis for her refusal of employment at the hotel in question are justified. The claimant is 25 years of age and if she must or desires to work, she has to adjust herself to the requirements of our industrial economy.

"Paragraph 3 of Section 40 of the Act reads as follows:

"After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers."

"Considering all the circumstances, I find that Section 40(3) must apply in this case. Therefore, the claimant is deemed to have refused without good cause an offer of suitable employment.

"The decision of the court of referees is reversed and the appeal of the insurance officer is allowed.

"The claimant is disqualified for a period of six weeks as from the date that this decision is communicated to her."

## Case No. CUB-271. (27 June, 1947)

**Held:** That work in her usual occupation as a waitress with hours from 12 noon until 8:30 p.m., six days per week, at the prevailing rate of wages, was suitable employment for a married woman, unemployed for three months, whose two sons attended school.

The material facts of the case are as follows:

After approximately three months' unemployment the claimant refused to apply for a situation in her registered occupation as a waitress with an employer located in the town in which she resided. The hours

of work were from 12 noon to 8.30 p.m. She gave as the reason for her refusal that this late shift would interfere with her domestic responsibilities, as she had two children in school. She had also refused other work as a waitress. The insurance officer disqualified her for a period of six weeks for refusing to apply for suitable employment and the court of referees unanimously upheld this decision.

The chairman granted the claimant leave to appeal to the Umpire.

#### DECISION

The appeal was dismissed.

"The facts in this particular case offer no features which might be considered unusual or exceptional within the meaning of Section 57(c)(ii) of the Act. I assume that they were thoroughly examined and weighed, in the light of the decisions given by me in similar cases.

"Under the circumstances, as there is no point of law involved and it is only a question of fact, I do not see any valid reason to interfere with the unanimous decision of the court of referees."

#### **Case No. CUB-272. (27 June, 1947)**

**Held:** That employment as a sewing machine operator at the minimum wage was suitable work for an experienced spool tender who had been unemployed for nearly nineteen weeks.

The material facts of the case are as follows:

The claimant, a married woman, had worked as a spool tender for 21 years. She separated from her employment on June 7, 1945, due to ill-health, and obtained extension of the two-year period when she made claim for benefit on September 27, 1946. She was disqualified immediately for a period of six weeks for refusing to apply for suitable employment, and again on February 6, 1947, when she refused to apply for employment as a sewing machine operator at the prevailing rate of pay, 25 cents per hour or by piece rate, claiming that the wages were too low. The court of referees unanimously reversed this decision, finding that the wage was not in accordance with the Minimum Wage Act.

The insurance officer appealed to the Umpire, and submitted that the wage was, in fact, the minimum wage set by the Minimum Wage Act for inexperienced power sewer machine operators, and that by reason of the length of unemployment, work in other than the claimant's usual occupation was suitable.

#### DECISION

The appeal was allowed.

"The evidence discloses that the salary offered as a sewing machine operator was at the prevailing rate of pay in the district and in accordance with the provision of Ordinance No. 4, 1942, of the Minimum Wage Commission, for employees having less than six months' experience in this kind of work.

"Considering the length of time that the claimant has been unemployed, I find that, under the circumstances, Section 40(3) must apply.

For these reasons, the decision of the court of referees is reversed and the appeal of the insurance officer is allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

### **Case No. CUB-273. (5 July, 1947)**

**Held:** That a claimant who has invested capital in a business, holds a business license, and spends all or part of his time in the conduct of the business must be presumed to be engaged in business on his own account and therefore not unemployed, unless he rebuts this presumption.

The material facts of the case are as follows:

The claimant had been employed as a grain buyer for seventeen years and his postal claim for benefit, made on July 16, 1946, was allowed. On December 17, 1946 he set up a small grocery business in his residence, to be operated in conjunction with the post office of which his wife had been post-mistress for a number of years. He informed the local office on December 30, 1946 that the store had not yet yielded any profit and that his wife could easily handle the work in the event of his becoming re-employed, as any work which he did in connection with the store could be done in the evening, after normal working hours. The insurance officer disqualified the claimant as from January 1, 1947 on the ground that he was not unemployed within the meaning of the Act, the disqualification to last until he proved that he was unemployed. The court of referees, by a majority decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me, the claimant had set up in business on his own account in December, 1946. He invested \$500.00 in the store, the business license was issued under his name and all accounts incurred in the business are incurred in his name and paid out of his own bank account. This would tend to indicate that the claimant had the intention of becoming self employed, when he entered business on his own account. In fact, he has carried on this business ever since, and he has, in my opinion, been for this reason self employed.

"However, when he appeared before the court of referees, he stated that the business was really his wife's and that the license had been issued in his name and the bank account carried likewise solely for the sake of convenience. The court of referees studied very carefully all the evidence of the case. They had the opportunity of hearing the claimant and they came to the conclusion that he was working for his wife and earning a remuneration, and that he was therefore excluded from receiving benefit under the Act.

"Whether the claimant carried on the business himself or whether he worked for his wife, in either case he cannot be considered as having been unemployed.

"Under the circumstances, I do not see any valid reason to interfere with the decision of the court of referees and the appeal of the claimant is dismissed."

### **Case No. CUB-274. (10 September, 1947)**

**Held:** That good cause for antedating a claim for benefit was not shown by a claimant who stated that upon becoming unemployed she had called at a local office of the Unemployment Insurance Commission where she was allegedly told that "there wasn't anything that could be done about it". No record could be found of the claimant having registered for employment or having made a claim for benefit.

The material facts of the case are as follows:

The claimant left her employment in March 1946, and on November 28, 1946 her solicitors wrote to the regional office of the Commission, requesting benefit on her behalf as from April 1, 1946. They submitted an affidavit signed by the claimant to the effect that she had visited the local office on either the 1st or the 2nd of April, 1946, and had been told that "nothing could be done about her getting unemployment insurance because she had not been regularly employed".

On December 17, 1946 the local office informed the claimant by mail that she would have to visit the office in person in order to make claim for benefit. The claimant applied for benefit on December 19, 1946, stating that she had worked for a book store as a sales clerk from August 26, 1946 to November 2, 1946, and was now holding two positions: one since December 5, 1946, working part-time at 30 cents an hour as an office and sales clerk for a furrier, and the other since December 6, 1946, working full-time at \$17 a week as a stockroom clerk with a firm of stationery manufacturers. She requested that her claim be antedated to April 1, 1946, and that consideration be given to the unemployed days between April 1, 1946 and December 5, 1946, being a total of 145 days. The claimant also stated as follows:

"I came to 'X' Street, in April of 1946 to seek unemployment insurance. Then I asked about employment. I did go to see about employment at several places, but could not find a suitable position. To the best of my knowledge I did register at that time but I can't remember every detail.

"I did come to 'X' Street, and asked a lady about unemployment insurance, but she told me there wasn't anything that could be done about it. So I did not know much about the situation, and thinking that she must have known what she was talking about, I decided to let it go at that which I did until I talked to my solicitor."

The local office advised that there was no evidence in that office or in the office of the Executive and Professional at "Y" Street that the claimant had ever registered for employment, and that if she had read her insurance book when she became unemployed she would have realized that she could have registered for employment and asked to file a claim, there being no necessity to enquire as to whether or not she was eligible for benefit.

The insurance officer disqualified the claimant on the ground that she was not unemployed within the meaning of the Act, the disqualification to last until she proved that she was unemployed, and did not

approve the antedating because she had not shown good cause for delay in making claim for benefit.

She appealed to a court of referees, before which her solicitor appeared on her behalf, and the court unanimously upheld the decision of the insurance officer, but the chairman granted the claimant leave to appeal to the Umpire.

The claimant appealed to the Umpire, her submission reading, in part, as follows:

"The claim was made by the appellant's solicitors on November 28, 1946 in a definite and certain manner and would be sufficient in law.

"The decision that the appellant was actually employed when she actually filed her claim in December, 1946 has no bearing whatsoever because a claim was made on her behalf by her solicitors and the Unemployment Insurance Commission did nothing for more than three weeks after the claim was made. This is a point of law in favour of the appellant.

"It is contended the appellant has a right on the evidence to submit that according to law her evidence being affirmative and stronger than a denial by those who had any knowledge about the particular incident testified to by the people who gave evidence only to a system, which, if operated perfectly would tend to show that there might be some mistake about the appellant's evidence.

"It is contended that if the girl who interviewed the appellant in April 1946 did not make out the cards assuming that the appellant had no right to unemployment insurance, or if any cards were made out, they were lost, mislaid or destroyed."

At the request of her solicitor, the claimant was granted an oral hearing before the Umpire but did not avail herself of the opportunity to appear.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me, the claimant filed a claim in person for benefit on December 19th, 1946, requesting that it be antedated to April 1st, 1946. The question to determine is whether or not she has shown good cause for delay in making her application for benefit.

"According to the official records on file, the first steps taken by the claimant in order to get unemployment insurance benefit were on November 28th, 1946, when her lawyers wrote a letter on her behalf to the T..... local office. The claimant states that she visited the local office at the beginning of April, 1946 in order to file a claim for benefit and was told that 'nothing could be done about her getting unemployment insurance'. This, however, is not substantiated by any further evidence and there is no record whatsoever in the local office to corroborate the assertion of the claimant.

"The court of referees had the opportunity of hearing the claimant and officials of the Unemployment Insurance Commission. It is apparent that they weighed very carefully all the evidence before them and they came to the unanimous conclusion that the claimant's explanation of

'what took place in April 1946 was not reasonable'. I agree with the unanimous decision given by the court of referees.

"The claimant has not shown good cause for delay in making her application for benefit and her appeal is dismissed."

### **Case No. CUB-275. (10 September, 1947)**

**Held:** That a travelling salesman who voluntarily ceased work for the Christmas and New Year season was not unemployed during this period of time as there was no actual separation from employment.

The material facts of the case are as follows:

The claimant, a travelling salesman, made claim for benefit on December 19, 1946 stating that he was not able to travel during the holidays, that he had stopped working on December 18, 1946 and would start again on January 15, 1947. The claim was allowed. Later, information was received from the claimant's employer to the effect that the claimant had received "a substantial bonus" as compensation for loss of salary and had received also his commission on sales during December. The insurance officer readjudicated and disqualified the claimant as from December 19, 1946, as he had not proved that he was unemployed. In appealing to a court of referees, which allowed the appeal, the claimant denied having received any remuneration for the days on which he had not worked.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, the question to decide is whether the claimant could be deemed to have been unemployed during the period for which he claims benefit.

"The claimant, in his own submission of December the 19th, 1946, states as follows:

"I stopped working on December the 18th, 1946 and will start again on January the 15th, 1947.'

"After having earned the sum of \$249.90 in commission during the first 17 days of December, the claimant decided voluntarily to cease work. The reason he gives is that he was not able to travel during the holidays. There was no actual separation from his employment and his statement to the local office does not appear to have fully disclosed all the facts of the case. He voluntarily decided to lay off work for his own convenience but still remained an employee of the [company].

"In view of all the circumstances, I feel that the court of referees have erred in their decision and the claimant is not entitled to benefit because he has not proved that he was unemployed within the meaning of the Act."

### **Case No. CUB-276A. (27 May, 1948)**

**Held:** That Saturday, being recognized as a non-working day at a plant where the working week consisted of five days from Monday to Friday, must be considered as a holiday within the meaning of Section 29(1)(c) of the Act, and therefore a non-compensable day.

The material facts of the case are as follows:

The claimant was employed as an assembler by an automobile manufacturer. His working week was five days, totalling forty-four hours. He was laid off on Thursday afternoon, February 13, 1947, due to lack of work, and made claim for benefit on February 14. He returned to work on February 17 and reported to the local office on February 22 in order to prove entitlement to benefit for two days, namely, Friday, the 14th, and Saturday, the 15th of February.

The local office reported that the pay week of the employer ran from Saturday to Friday and, as the claimant worked the full working week from Monday, the 17th, to Friday, the 21st, a contribution had been entered in his insurance book for Saturday, the 15th.

The insurance officer disqualified the claimant from receipt of benefit for Friday, February 14, 1947, under Section 35(1)(b) of the Act, because it was his first day of unemployment in his claim week, and for Saturday, February 15, 1947, under Section 29(1)(d), as this day could not be deemed to be an unemployed day in view of the fact that he worked the full working week from February 17 to February 21. This disqualification was upheld by a court of referees.

The union of which the claimant was a member appealed to the Umpire, its submission reading in part as follows:

"X Corporation has an established five-day week which begins on Saturday and ends on Friday.

"This means that when an employee works 5 working days in any week which begins on Saturday and ends following Friday the company records 6 daily contributions in employee's insurance book. (Sec. 29(1)(d)). A non-compensable day as per Section 35(1)(b) is the first day of unemployment in a claim week unless the claimant is unemployed for the whole of that week or was unemployed for the whole of the previous week.

"In the case of [the claimant] he was laid off Friday, February 14 and returned Monday, February 17. He reported on his claim February 22, advising that he was unemployed Friday, February 14 and Saturday, February 15, but had worked Monday, February 17, through to Friday, February 21. Under such circumstances per Sections 29(1)(d) and 35(1)(b) the claimant is not entitled to benefit for either of the days he was unemployed. This injustice occurs when a company has an established five-day week which begins on Saturday and ends on Friday. The X Corporation refuses to change its work week, therefore, the union appeals to the Umpire for equity so that a worker at X will be given the same benefit as a worker at Z Company." (The latter has a five-day working week ending on Friday and a pay week ending on Saturday.)

The Umpire gave the following decision (No. CUB-276—10 September, 1947):

"The question to decide is whether the days in question, namely, Friday the 14th of February and Saturday the 15th of February, 1947, are days for which the claimant is entitled to receive benefit. "The company for which the claimant is working have by mutual agreement with their employees adopted a five-day week as the regular working week.

"In this particular instance, the claimant was laid off for one day, namely, Friday, the 14th of February, 1947, and wishes to include the next day, Saturday, as part of the working week in order to qualify for the payment of insurance benefit for that one day.

"Section 35 of the Act reads as follows:

- "(1) An insured person shall not be entitled to benefit
  - (a) for the first nine days of unemployment in any benefit year; nor
  - (b) for the first day of unemployment in any claim week,
    - (i) unless the insured person is unemployed for the whole of that week, or
    - (ii) unless the first day of unemployment in that week immediately follows a period of continuous unemployment of not less than one full week;

and any day of unemployment excluded under this paragraph shall be in addition to the days, if any, excluded under paragraph (a) of this subsection.

- "(2) For the purpose of this Act "claim week" means a period of six consecutive days exclusive of Sunday beginning on a day to be determined in a manner prescribed by the Commission."

"The applicable section, namely (b), clearly states that an insured person is not entitled to benefit on the first day of unemployment in any claim week.

"However, in this instance, insurance benefit is being claimed for the Saturday which is not a day on which the company normally operates the plant due to the agreement between the company and its employees.

"According to the agreement between X Corporation and the union dated February 1, 1946, it is stipulated in Section 36 as follows:

"HOURS AND WAGES

"The regular hours of work will consist of forty-four (44) hours per week and will be worked as follows:—

"Nine (9) hours per day—Monday to Thursday inclusive.

"Eight hours on Friday.

"Any work performed over nine (9) hours in any of the four days stated above and over eight (8) hours on Friday will be overtime and will be paid for at the rate of time and one-half. Any work performed on Saturday and Sunday will be paid for at the rate of time and one-half. The present practice of paying a five cent premium for night shift work will be continued."

"It is obvious from this section of the agreement that Saturday is treated in the same way as Sunday, as a non-working day, on which day the claimant is not normally employed. Persons who have to work on either of these days receive extra remuneration at the rate of time and one-half because these days are not regarded as being the normal days on which the claimant or other employees work and therefore cannot be deemed to be unemployed days.

"Although the claimant was laid off for one day, namely, Friday the 14th, he still was an employee of the company and subject to the

terms and conditions of employment as contained in the agreement. The agreement entered into by the company and the union must be respected and recognized and is bound to have an important bearing in determining the rights of insured persons under the Act. Therefore, the claimant cannot be deemed to be unemployed on Saturday, the 15th of February, 1947.

"Having regard to all the circumstances of the case, I have no alternative but to dismiss the appeal and uphold the unanimous decision given by the court of referees."

The union of which the claimant was a member requested a rehearing of the case under Section 64 of the Act, and an oral hearing was granted at which the union was represented by its solicitor and one of its officials, and the Commission by its Legal Adviser.

#### DECISION

The appeal was dismissed.

"The counsel for the union stated at the outset of the hearing that the union concurred with the first part of my decision which deals with Friday, February 14, 1947, being the first day of unemployment for which the claimant was disqualified from the receipt of benefit under Section 35(1)(b) of the Act, but that it felt, however, that, had the entire collective agreement and all the facts of the case been placed before me in relation to Saturday, February the 15th, the claimant would not have been disqualified also for that day.

"According to the union's counsel, there is nothing in the collective agreement which gives Saturday the aspect of a non-working day; Section 36 therein (already quoted in CUB-276) merely sets out the hours of work which will be paid for at regular time and those which are recognized as 'premium hours'. However, in his opinion, section 3 of this agreement, clearly indicates that Saturday is considered as a working day since management, under that section, 'has the exclusive right to tell their employees to work on Saturday, or Sunday or any other day' and, in fact, 'many of their employees do work on those days'.

"Section 3 reads as follows:

"The union recognizes the right of the company to hire, promote and transfer employees, and to suspend, discharge or otherwise discipline employees for just cause, subject to the right of the employee concerned to lodge a grievance in the manner and to the extent as herein provided.

"The union further recognizes the right of the company to operate and manage its business in all respects in accordance with its commitments and responsibilities. In addition the location of the plants, the products to be manufactured, the schedules of production and the methods, processes and means of manufacturing are solely and exclusively the responsibility of the company. The company also has the right to make and alter from time to time rules and regulations to be observed by employees, which rules and regulations shall not be inconsistent with the provisions of this agreement."

"Finally, the only days recognized as non-working days by the collective agreement, according to the union's counsel, are the days considered as holidays under Section 48, which does not include Saturday.

"After very serious consideration of these contentions, I fail to see how they are borne out either by the terms of the agreement itself or by the conditions which actually prevail at the X Corporation plant at W . . . . Although the collective agreement does not specifically constitute a five day working week at this plant, it states, however, the regular hours as being 44 in a week, from Monday to Friday, and it provides for extra pay for work done on Saturdays and Sundays. This, in itself, is very strong evidence of the existence of a five day working week at the plant. Furthermore, no proof, although requested at the hearing and notwithstanding the offer to file same by counsel, has been submitted to the effect that any great body of workers do normally work on Saturday. Under the circumstances, it is reasonable to assume that the agreement itself as well as the practice established thereunder has made Saturday a non-working day. This construction of the agreement and of the practice established thereunder is fully substantiated by the memorandum submitted by the union at the time of the first hearing where it was stated:

"'X Corporation has an established 5 day week which begins on Saturday and ends on Friday.'

"As an alternative ground for appeal, the union's counsel further contended that even if the collective agreement did, in fact, constitute a five-day week, it did not affect the claimant's right to receive unemployment insurance benefit for Saturday because there is no section under the Act which provides a disqualification for that day.

"This argument is definitely rebutted by Section 29(1)(c) which was quoted by the counsel of the Commission and which reads as follows:

"'An insured person shall be deemed not to be unemployed:  
(c) on any day that is recognized as a holiday for his grade, class  
or shift in the occupation or at the factory, workshop or other  
premises at which he is employed unless otherwise prescribed.'

"Under this section, the claimant should be disqualified for Saturday, February 15, 1947. Furthermore this conclusion is fully supported by British jurisprudence, which was quoted by the Commission's counsel at the hearing, wherein a recognized holiday is defined:

"'Customary or recognized holidays are those days which the employers and workers concerned have agreed (whether expressly or by implication based upon acquiescence) shall be non-working days. When those holidays have been defined and determined they become a normal incident of employment and an implied term of contracts of service which cannot be varied except by an express or implied agreement between the parties.'

"Therefore, Saturday, being recognized a non-working day at the X Corporation, must be considered as a holiday within the meaning of Section 29(1)(c) of the Act.

"I was pleased to point out at the hearing that the five-day week is one of the accomplishments brought about by the labour unions in co-operation with management and the Government and we must always keep in mind that the Act should be interpreted in order that the true interest of the workers under a collective agreement be duly protected.

"The appeal is dismissed."

**Case No. CUB-277. (10 September, 1947)**

**Held:** That work as a hotel laundress is the same occupation as work as a laundress in a commercial laundry.

The material facts of the case are as follows:

The claimant, a married woman 50 years of age, was employed as a hotel laundress at a salary of \$20.00 per week from March 19, 1945 to August 24, 1946, when she was separated on account of a shortage of work. Her claim for benefit, made on February 26, 1947, was allowed. On April 9 next the local office notified her of permanent employment as a laundress with a commercial laundry. The rate of pay was 37 cents per hour, which is stated to be the prevailing rate in the district for this type of work, the hours being 7.30 a.m. to 4.30 p.m. She refused to apply for this employment, and the insurance officer thereupon disqualified her from receipt of benefit for a period of six weeks.

An appeal was made to the court of referees, the claimant stating that the work in a hotel laundry was entirely different from that in a commercial laundry and the wages were too low. The court allowed the appeal, holding that the claimant had been available for work for less than two months, that the type of work was different from her former work, and that the conditions of employment regarding hours and rate of pay were not as good as those which she had formerly enjoyed.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was allowed.

"The claimant was last employed as a laundress in a hotel when, on August 24, 1946, she was laid off. After having for all intents and purposes withdrawn herself from the labour market on account of domestic circumstances for a period of six months, she filed a claim for benefit on February 26, 1947, which was allowed. On April 9, 1947, after having been in receipt of benefit for six weeks, she was notified of employment as a laundress in a commercial laundry. According to the submissions, the salary offered was at the prevailing rate of pay in the district for that kind of work. The claimant refused this offer of employment because, in her opinion, it was different kind of laundry work than the one she was accustomed to and the wages were too low.

"Sections 40(1)(a) and 40(2)(b) of the Act read as follows:

"‘40(1) An insured person shall be disqualified from receiving benefit if he,

- (a) after an officer of the Commission or a recognized agency or an employer has notified him that a situation in suitable employment is vacant or about to become vacant, has without good cause refused or failed to apply for such situation or failed to accept such situation when offered to him.
- (2) For the purposes of this section, employment shall be deemed not to be suitable employment for a claimant if it is
  - (b) employment in his usual occupation at a lower rate of wages or on conditions less favourable, than those observed by agreement between employers and employees, or failing any such agreement, than those recognized by good employers.'

"From the evidence before me, it is apparent that the work offered to the claimant, although in certain respects different from that of her previous employment, was in her usual occupation, namely 'laundry work' and was at the prevailing rate of pay for the district and on conditions not less favourable than those recognized by good employers. Therefore, it was suitable employment within the meaning of Section 40(2)(b) of the Act.

"Under the circumstances, the claimant must be deemed to have, without good cause, refused to apply for suitable employment.

"The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks from the date upon which this decision is communicated to her."

### **Case No. CUB-278. (10 September, 1947)**

**Held:** That a salesman whose earnings are paid by commission is not unemployed while he is devoting his time to selling, even though he may receive no commission until goods are delivered.

The material facts of the case are as follows:

The claimant had been employed as a creamery manager for 17 years. His claim for benefit, made on August 29, 1946 was allowed. At a later date he informed the local office that he was engaged as a distributing agent for a company which sold fertilizers and also as district superintendent for a seed growers' association. He claimed that he had not received any remuneration as yet, but was accepting orders for which he would receive commission upon delivery in the spring. The insurance officer disqualified him from receipt of benefit as from December 5, 1946, on the ground that he was not unemployed within the meaning of the Act.

The claimant appealed to the court of referees, before which he appeared, and submitted that, although it was physically possible for him to have carried on either or both of these occupations outside his ordinary working hours while employed as creamery manager, this arrangement would not have been satisfactory to either of the firms concerned because of the fact that their busy seasons coincided with that of the creamery business. The court, by a majority decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me, the claimant accepted the appointment of district superintendent for the ..... Seed Growers and also of distributing agent for the ..... He admits that while he is acting as agent for these two agencies he cannot accept full time employment in his previous position as creamery manager. His main contention seems to be the fact that whilst employed as agent for the two companies in question, he would not receive any commission for the goods that he sold for some time to come, and feels that,

during this period, he should be in receipt of benefit under the Unemployment Insurance Act.

"The question of how and when wages for commission are to be paid to an employee of a company or companies is a matter which does not concern the Commission; that is a matter between the employer and employee and the latter should see to it that his interests are protected when he enters into an agreement.

"Under the circumstances, the claimant has not proved that he is unemployed within the meaning of the Act. I agree with the decision of the court of referees and the appeal of the claimant is, therefore, dismissed."

### **Case No. CUB-279. (10 September, 1947)**

**Held:** That full-time employment in her usual occupation was suitable for a married woman who had worked part-time for the last six months of her most recent employment and who had been unemployed for three months.

The material facts of the case are as follows:

The claimant, a married woman, was last employed as a stock record clerk for three years. For two and a half years she received a salary of \$110.00 a month for full-time employment, the hours of work being 40 a week, and during the last six months of her employment she worked for three or four days a week at a salary of \$5.00 a day. She became separated from her employment on December 20, 1946 and made claim for benefit on February 24, 1947, which was allowed.

On March 27, 1947 the claimant refused to apply for employment as a stock record clerk at the commencing salary of \$100.00 a month, the hours of work being from 9.00 a.m. to 5.00 p.m., with a 44-hour week. The employment was located at a convenient distance from her home. She stated that she would prefer to have a part-time job. The local office reported the prevailing district rate of pay for this type of work to be \$90 a month and up. The insurance officer disqualified her for a period of six weeks on the ground that she had, without good cause, refused to apply for a situation in suitable employment and the court, by a majority decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The claimant had been unemployed for approximately three months when full-time employment was offered to her. Because she is a married woman with domestic responsibilities, she prefers to accept part-time employment which apparently was not available.

"From the facts and submissions before me, it is evident that the position offered to the claimant was suitable employment and was one which she ought to have accepted. Under the circumstances, I have no alternative but to uphold the decision given by the court of referees and dismiss the appeal."

**Case No. CUB-280. (10 September, 1947)**

**Held:** That a claimant who was at sea for two weeks was not available for employment during this time as he was not in a position to accept suitable employment nor could any office or official of the Commission either in Canada or the U.S.A. have communicated with him to offer him any suitable employment which might have been available. Antedating of the claim to cover the two-week period was not allowed.

The material facts of the case are as follows:

The claimant was employed by a Canadian transportation company as a fourth class engineer on an ocean going vessel and on January 11, 1947 became separated from his employment when he was hospitalized in a foreign port. He was discharged from the hospital on the 1st of February and returned to his home town on February 15. On making claim for benefit on February 18, 1947 he requested antedating of his claim to February 1. The insurance officer did not approve the request for antedating. The claimant appealed to a court of referees and submitted that when he was discharged from hospital on February 1, 1947 he came directly under the charge of the British Consulate and that the Consul failed to register him for employment or for unemployment insurance benefit. By unanimous decision, the court reversed the decision of the insurance officer, being of the opinion that the claimant was capable of and available for work from the day on which he was discharged from hospital, but that he should be disqualified for February 15, 16 and 17, as it was possible for him to have reported to the local office on the 15th, although he did not do so until the 18th.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was allowed.

"From the facts and submissions before me, which are not in dispute, the question I have to decide is whether during the period in question, namely from February 1st, 1947 to February 15th, 1947, the claimant could be considered as being available within the meaning of the Unemployment Insurance Act.

"The claimant, due to sickness, was discharged from his ship in the Panama Canal Zone and it took him approximately two weeks to arrive back at his home town in V....., where three days later, he reported to the local employment office and made application for insurance benefit in the prescribed manner.

"The availability of any claimant within the meaning of the Act is a matter that cannot be lightly disregarded, irrespective of the circumstances.

"It is the duty of a claimant when making application for benefit to be in contact with the nearest employment office of the Commission at all times. Such contact is one of the main and necessary features of unemployment insurance administration. It is stated in this case, that the claimant attempted to register with the British Consul in the Panama Canal Zone but without success. However, assuming that claimant had registered with the British Consul or had registered at any of the employment offices in the U.S.A. which is permissible under a reciprocal agreement entered into on April 12, 1942—the question to

determine is whether the claimant was available within the meaning of the Act during the period that he was travelling between the Panama Canal Zone and his home city of V.....

"Can it be said that during this period of 14 days, the claimant was in a position to accept suitable employment if offered to him, or during the same period, could any officer or official of the Commission either in Canada or U.S.A. communicate with claimant to offer him any suitable employment that might be available?

"It is obvious that the answer in both cases would be in the negative.

"Under the circumstances, I must allow the appeal of the insurance officer and consider the claimant was not available for employment between the 1st day of February 1947 and February the 15th, 1947.

"The appeal is allowed."

### **Case No. CUB-281. (10 September, 1947)**

**Held:** That a lithograph artist who, because of ill-health, was unable to perform any work outside of his own home, and whose doctor said that he should not be required to attend at the local office in his home city, was not available for work although his last employer was willing to send work to his home. He had not previously worked under the conditions outlined above. (CUB-111 referred to.)

The material facts of the case are as follows:

The claimant, aged 72 years, left his employment as a litho artist, at which he had worked for 33 years, due to ill health. When making claim for benefit six months later, he stated that he could do sketching of letterheads, etc., but could work only at home because of his heart condition. The insurance officer disqualified him on the ground that he was not available for work, the disqualification to last until he proved that he was available.

The claimant appealed to a court of referees and produced a medical certificate which, after describing the nature of his incapacity, stated that he was unable to do ordinary work but could do light work at home, and recommended that, because of his heart condition, he be excused from making weekly calls at the local office. The court unanimously reversed the decision of the insurance officer when it was shown that, during the week of the hearing, the claimant had already performed one and a half days' work at home, which had been supplied to him by his former employer.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, the question to decide is whether the claimant is capable and available for work within the meaning of the Unemployment Insurance Act.

"In a parallel case namely, CU-B.111 and under date of the 24th day of July, 1946, I stated as follows:

"Where persons are within easy access of a local office it is necessary in accordance with the regulations of the Act to prove

capability and availability by attending at the local office and signing a register to prove they are unemployed. . . .

"Personal registration is really the first essential test of proving both availability and capability."

"Further, in the same decision, I stated:

"It is apparent that at the time that the claimant made application for benefit she was confined to her home and unable to leave the premises. The local office in allowing the claimant to file a postal claim went somewhat beyond their jurisdiction in permitting an insured person residing within easy access of the local office to file a claim for benefit by mail."

"In the case referred to, claimant was held not capable and available for work even though it was claimed that work could have been performed by her in her residence.

"In this instance, the medical evidence submitted indicates that the claimant could not be regarded as being available for work within the meaning of Act. Whilst he is deserving of every sympathy and consideration, having worked with the same company for approximately 34 years and having evidently given satisfaction to his employers, it is regrettable that he cannot qualify for benefit under the Unemployment Insurance Act.

"The appeal of the insurance officer is therefore allowed and the claimant is disqualified from receipt of benefit for an indefinite period until and unless he proves availability within the meaning of Section 27(1)(b) of the Act, such disqualification to begin on the date upon which this decision will be communicated to him."

#### **Case No. CUB-282. (10 September, 1947)**

**Held:** That a claimant who requested part-time work and who refused to apply for either part-time or full-time suitable employment, was not available for work. A decision which disqualifies for three unstated days in each week is erroneous.

The material facts of the case are as follows:

The claimant, a married woman, voluntarily left her work as an office clerk on December 14, 1945, and her claim for benefit, made on January 28, 1947, was allowed. She worked full-time as a mail order clerk in a department store at a salary of \$16 a week, from March 6, 1947 to April 2, 1947, and again went on benefit. On May 5 next she was notified of permanent, full-time employment as a sales clerk in a variety store at a salary of \$16 a week, which was the prevailing rate of pay for the district. She stated that she did not wish to accept full-time work because she had household duties to perform. The local office reported that she had refused, the previous week, to apply for part-time employment as a sales clerk in a department store. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment.

The claimant appealed to a court of referees and submitted that she had interviewed the employer and had been told that the employment was full-time and permanent, whereas she intended to stay in W.....

only until September 1, 1947, when she would be accompanying her husband to the city of T..... where he expected to attend university. She maintained also that she had registered for part-time employment, and that she was not available for full-time employment because she had been doing housekeeping for her landlady three days a week, in order to help pay the rent. The court of referees, before which the claimant appeared, upheld the decision of the insurance officer and, in addition, imposed a disqualification on the ground that she was not available for work, for a period of three days a week, commencing May 6, 1947, the disqualification to last until she proved that she was available.

The insurance officer appealed to the Umpire, requesting that a decision be rendered as to whether under the Act a claimant could be disqualified for a certain number of undetermined days in each week.

## DECISION

The appeal was allowed and the claimant disqualified on the ground that she was not available for work, the disqualification to last until she proved that she was available.

"From the facts and submissions before me, the question to decide is whether the claimant 'can be disqualified from receipt of benefit for a certain number of undetermined days in each week'.

"The claimant whilst she states that she is available three days per week and does not state on which days she is available, has in fact, refused part-time employment when it was offered.

"An insured person, who claims that he is available only for part-time employment, must give full information as to the days of a week on which he is available both in his own interest, so that employment may be found for him, and in the interest of the Commission, from the standpoint of proper administration of the Act. Whenever the claimant is unable to supply this information, the reasonable inference is that he is not available for work.

"In the present instance, the claimant was disqualified 'from receiving benefit for an indefinite period of time, three days a week' but the days of the week on which the disqualification should apply were not stated.

"This decision of the court of referees is erroneous for three reasons:

- (a) it is too indefinite for an effective application;
- (b) there is no provision in the Unemployment Insurance Act for such a disqualification;
- (c) the circumstances of the case are such that the claimant should be disqualified for an indefinite period until and unless she proves her availability.

"The appeal of the insurance officer is allowed."

## Case No. CUB-283. (10 September, 1947)

**Held:** That a locomotive engineer, suspended from duty by his employer, did not have good cause for antedating his claim for benefit for a period of five weeks. Although there was a discrepancy between the stories told by the claim-

ant and an officer of the Commission regarding what had taken place during the former's visit to the local office on January 31, 1947, the claimant had not presented himself again at the local office until March 3, 1947. He should have reported during this period to register for employment and to prove entitlement to benefit. (CUB-116 referred to.)

The material facts of the case are as follows:

The claimant, a locomotive engineer employed by a railway company and suspended from duty on January 28, 1947, made claim for benefit on March 3, 1947 and at the same time requested antedating of his claim to January 31, 1947, on the ground that on that day he had visited the local office and had been told that nothing could be done for him until he secured his insurance book. The interviewing officer's story was that the claimant had reported at or near closing time on or about January 31, 1947, and had been requested to report in the morning to register for employment and have his claim taken. He was also requested to secure his insurance book, which was still with the railway company. The insurance officer did not approve the request for antedating and the claimant appealed to a court of referees, before which he appeared, with the secretary of the union of which he was a member. The court upheld the decision of the insurance officer.

The union appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me the question to decide is whether the claimant is entitled to antedate his claim from March 3, 1947, to January 31, 1947, a period of approximately five weeks.

"In decision CUB-116 which I gave in the case of seven members of a union on the 25th day of July, 1946, I indicated the amount of publicity that had at that time been given by the Commission in reference to the operations of the Act.

"During this period of five weeks, the claimant should have presented himself at the local office not only to register for benefit but to show that he was genuinely seeking employment and to prove that he was available for work.

"The claimant has not shown 'good cause' within the meaning of the Act in requesting that his claim be antedated.

"Under the circumstances, I have no alternative but to uphold the unanimous decision of the court of referees and the appeal is therefore dismissed."

## Case No. CUB-284. (10 September, 1947)

**Held:** That a claimant who had accepted part-time work and had voluntarily left this employment because the salary was insufficient for his needs, left without just cause.

The material facts of the case are as follows:

On November 2, 1946, the claimant, having reached the age of 65 years, was retired from his position as checker with a railway company. His claim for benefit, made on November 5, 1946, was allowed. On

January 1, 1947, he accepted part-time work as a caretaker at a salary of \$57 a month, his hours of work being from thirty to thirty-five a week. He left this employment on April 15, 1947, stating that at that time he was working only twenty-two to twenty-four hours a week and that he was not earning enough to maintain his home. The insurance officer disqualified him for a period of six weeks on the ground that he had voluntarily left his employment without just cause. The claimant appealed to a court of referees, before which he appeared, his appeal stating that he was not earning enough money to help maintain his home, and that he "was told at the office that they would not allow any man to hold two jobs". The court unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, which are not in dispute, the claimant accepted a position on the 1st of January 1947 as a part-time caretaker in the city of W..... receiving a salary of \$57.00 per month. His hours of work at that time were from 30 to 35 per week. Subsequently, they were reduced to 22 to 25 hours per week and from the information before me, there was no corresponding reduction in the wages received by the claimant.

"Before the claimant left his work, he should have made inquiries as to the possibilities of his obtaining better and more remunerative employment.

"It would appear, from the decision given by the court of referees, that they may have been under the impression that the claimant's wages were reduced in proportion to the hours he worked; such was not the case.

"Under the circumstances, I feel that the claimant has not shown good cause in leaving voluntarily his employment. The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him."

## Case No. CUB-285. (10 September, 1947)

**Held:** That a claimant who was self-employed repairing motor cars for three weeks immediately following his loss of employment due to a stoppage of work caused by a labour dispute, having previously followed this occupation in his spare time while employed, and whose self-employment then terminated, had not become regularly engaged in some other occupation within the meaning of Section 39(1) of the Act.

The material facts of the case are as follows:

The claimant, aged 25 years, lost his employment as an underground labourer with a coal mining company, because of a stoppage of work due to a labour dispute, and on making claim for benefit on March 31, 1947, stated, "Then went to work for myself fixing cars, . . . I am now finished this job, and unable to find employment . . .".

He had worked in the mine for a year prior to separation on February 15, 1947, had been in the armed forces from 1942 until February, 1946, and had worked in the mine before enlisting for active service.

The insurance officer disqualified the claimant from receipt of benefit because, in his opinion, the loss of employment was due to a work stoppage caused by a labour dispute, and although he had become temporarily self-employed, he had not (1) become bona fide employed elsewhere in his usual occupation, or (2) become regularly engaged in some other occupation.

The claimant appealed to a court of referees, stating, inter alia, that he was "willing to accept employment anywhere". He appeared before the court and his evidence showed that, prior to separation, he had been engaged in the repair of motor cars in his spare time. The appeal was allowed, the court finding that "he would have separated from his employment with the ..... Coal Co., to go into the auto repair business on his own regardless of whether a strike occurred or not. . . . we find that . . . the claimant became regularly engaged in another occupation after separating himself from the ..... Coal Co., . . .".

The insurance officer appealed to the Umpire, submitting that this self-employment from February 17 to March 8 could not constitute regular engagement in some other occupation, within the meaning of the Act.

## DECISION

The appeal was allowed.

"From the facts and submissions before me, the questions to decide are (1) whether the claimant lost his employment by reason of a stoppage of work due to a labour dispute, and (2) whether the claimant had become bona fide employed elsewhere within the meaning of the Act.

"It is apparent from the evidence and the report from the employer that the claimant was separated from his employment by reason of a stoppage of work due to a labour dispute.

"Section 39(1) of the Act reads as follows:

"'An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory, workshop or other premises at which he was employed unless he has, during the stoppage of work, become bona fide employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation; but this disqualification shall last only so long as the stoppage of work continues.'

"Claimant, whilst an employee of the company, repaired automobiles, etc., in his spare time. When he was separated from his employment due to the labour dispute, he continued his spare time subsidiary employment. He did so for a short while and when he had no further repairs, he applied for benefit under the Act.

"Could the claimant, for this period of self employment, be regarded as having been regularly employed in some other employment?

"Evidently, the claimant did not intend to remain self employed as in his submission of May 5, 1947, he stated 'I am willing to accept employment anywhere'. This infers that the work that the claimant was performing repairing cars, etc., was of a temporary nature and that he could not be regarded as having been regularly engaged in some other occupation. Therefore, he cannot claim relief from disqualification under the Act.

"The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit for the duration of the stoppage of work due to the labour dispute."

#### **Case No. CUB-286. (10 September, 1947)**

**Held:** That a postal claimant who had made no endeavour, during a period of four months, to ascertain the nature of her rights and responsibilities under the Act, of which she was ignorant, had not shown good cause for delay in making claim for benefit. If she were genuinely seeking employment during this period she should have applied to the nearest local office.

The material facts of the case are as follows:

The claimant was last employed by a hotel in a clerical capacity for a period of 3 months, separating on September 14, 1945. She made claim for benefit by mail on April 24, 1947, and requested that it be antedated to March 29, 1947, on the ground that she had written to a local office with the intention of making application for benefit on March 29. The insurance officer approved the request for antedating, extension of the two-year period was granted, and the claim was allowed. The claimant then requested a further antedating, this time to December 1, 1946, stating that she did not apply for benefit on that date because she did not have 180 days' contributions to her credit within the two years immediately preceding, and that she had not been aware until informed in April 1947, by an officer of the Commission who visited her village, that she could have obtained extension of the two-year period on account of an illness which lasted for 13 months. The insurance officer did not approve this request for antedating, on the ground that good cause for delay had not been shown.

The claimant appealed to a court of referees, before which she appeared, and the court, by unanimous decision, approved the request for antedating to December 1, 1946, the decision reading, in part, as follows:

"In the opinion of the court, the claimant relied on the booklet aforesaid 'Unemployment Insurance and You' for her knowledge of the provisions of the Act. Q. 13 of this booklet gave no indication of possible extension of the two-year period for any reason whatsoever. In addition, F ..... is a small village at least 30 miles from the nearest unemployment insurance office and the court feels that the claimant had little opportunity of learning about the said Act other than from the said booklet."

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, the question to decide is whether the claimant has shown good cause to antedate her claim for benefit from March 29, 1947 to December 1, 1946.

"Although the claimant resides in a district which is at some distance from a local Employment office, she could easily have phoned or travelled from F..... to W..... or O..... to make sure of what her rights and responsibilities were under the circumstances. If she was genuinely seeking employment between December 1, 1946 and March 29, 1947, it was her duty to apply to any of the nearest local offices for assistance in this respect.

"The Unemployment Insurance Act having been in operation for so many years, alleged ignorance of its provisions cannot be accepted as a valid reason for antedating a claim.

"Under the circumstances, the claimant has not shown good cause to antedate her claim for benefit from March 29, 1947 to December 1, 1946.

"The court of referees erred in their decision and the appeal of the insurance officer is therefore allowed."

#### **Case No. CUB-287. (10 September, 1947)**

**Held:** That a union member who ceased work in sympathy with members of another union who had struck against their mutual employer, and who refused to cross a picket line in order to work, became thereby a participant in the labour dispute and was disqualified under Section 39(1).

The material facts of the case are as follows:

The claimant, a carpenter and member of a union hereinafter referred to as "Union A", lost his employment by reason of a stoppage of work which occurred as a result of a labour dispute between the employer and the hod carriers employed on the project, who were members of a union to which the claimant did not belong, and which will be referred to hereinafter as "Union B." He made claim for benefit, contending that he was not participating in, financing or directly interested in the labour dispute but that he, as a member of Union A, was obliged under penalty of a fine authorized by the constitution of the parent body to respect the picket line set up by Union B, which had the same affiliation. He was disqualified by the insurance officer for so long as the stoppage of work continued and the court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, the main question to decide is whether the claimant lost his employment by reason of a stoppage of work due to a labour dispute at the factory or plant where he was employed. Then in the affirmative, is the claimant entitled to be relieved from disqualification under Section 39 and Section 43 of the Act?

"Section 39 of the Act reads as follows:

"(1) An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory, workshop or other premises at which he was employed unless he has, during the stoppage of work, become bona fide employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation; but this disqualification shall last only so long as the stoppage of work continues.

"(2) An insured person shall not be disqualified under this section if he proves

- (a) that he is not participating in, or financing or directly interested in the labour dispute which caused the stoppage of work; and
- (b) that he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom are participating in, financing or directly interested in the dispute.'

"It is established and admitted that the claimant was employed as a carpenter at premises in which were also employed men belonging to [Union B]. A dispute arose between [Union B] and their employers and as a result, a stoppage of work took place. The claimant, on his own volition, ceased work in sympathy with the hod carriers, collected his tools and voluntarily became separated from his employment.

"In his submission of June the 7th, he stated very explicitly 'that when a strike is called by a trade union and has the consent of the parent body and pickets are placed on the job or jobs, all tradesmen affiliated are compelled to respect the picket line according to sub-section 3 of Section X of the constitution of the parent body and the Building Trades Council under penalty of a fine'.

"Therefore, according to his own admission, the claimant automatically became a participant to the dispute as well as being an interested party and he cannot claim relief from disqualification under Section 39 of the Act.

"However, the court of referees, in their decision, consider that the claimant is also entitled to relief from disqualification, under Section 43 of the Act, which reads as follows:

"Notwithstanding anything contained in this Act, no insured person shall be disqualified from receipt of benefit by reason only of his refusal to accept employment if by acceptance thereof he would lose the right

- (a) to become a member of; or
- (b) to continue to be a member and to observe the lawful rules of; or
- (c) to refrain from becoming a member of any association, organization or union of workers.'

"Section 40(2) (a) reads as follows:

"For the purposes of this section, employment shall be deemed not to be suitable employment for a claimant if it is

- (a) employment arising in consequence of a stoppage of work due to a labour dispute.'

In a previous decision, CUB-190, under date of December 23, 1946, I stated, in reference to Sections 43 and 40(2) (a) of the Act, that these two sections only apply to insured persons who have become unemployed by reason other than a stoppage of work due to a labour dispute which still continues and who claim benefit or who are already in receipt thereof and who refuse to accept the offer of an employment which would affect their rights to membership in organizations of workers. These sections do not apply to the claimant who is unemployed as a result of a stoppage of work due to a labour dispute.

"Under the circumstances and in accordance with the decision above-mentioned, the claimant is not entitled to relief from disqualification under Section 43 of the Act.

"The appeal of the insurance officer is therefore allowed and the claimant is disqualified from receipt of benefit for the duration of the stoppage of work.

"This decision will apply in the case of . . . . ., the circumstances of which are practically identical to the present one and the differences minor in character."

#### **Case No. CUB-289. (10 September, 1947)**

**Held:** That immediate referral to the type of employment in which a claimant has worked for nineteen months previously is proper and a refusal of such referral justifies a disqualification. An expressed preference for another type of employment to which she has been accustomed does not affect the suitability of the employment offered.

The material facts of the case are as follows:

The claimant, a married woman, aged 47 years, had an employment history of ten years as a fruit packer and nineteen months as a chambermaid, her last employment being fourteen months as a hotel chambermaid at a salary of \$19.31 a week. Two days after making claim for benefit, she refused to apply for steady employment as a chambermaid at an apartment hotel at a wage of \$21 for a 44-hour week, the prevailing rate of pay for the district being 40 cents an hour and up. She stated that the work was too heavy and requested work as a fruit packer, in which occupation, according to the local office, there was very little opportunity for a woman of her age. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment. The claimant appealed to a court of referees which unanimously reversed the decision of the insurance officer, being of the opinion that sufficient time had not elapsed before referring her to work as a chambermaid, in view of her expressed wish that she be given another type of employment.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"From the facts and submissions before me, which are not in dispute, the claimant was separated from her employment on the 2nd day of June 1947 and made application for benefit on the following day. Two

days later, on the 5th day of June, she was offered similar employment to that which she had formerly been accustomed to. In their decision, the court of referees state

"that if a contributor to unemployment insurance has an accustomed line of work and has applied for unemployment insurance benefit it is not open to her to refuse employment at will and then expect to continue on benefit."

"I am in agreement with this expressed opinion of the court of referees. The claimant who had 19 months of experience as a chamber-maid now prefers employment as a packer. According to the submissions, there is little if any opportunity for a woman of her age to find employment as a packer in the district.

"In many previous decisions I have given, I have stated that a claimant must at all times, be available, ready and willing to accept suitable employment if and when offered, without delay.

"Under the circumstances, the claimant must be deemed to have refused to accept suitable employment within the meaning of the Act. Therefore, the decision of the court of referees is reversed and the appeal of the insurance officer is allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date this decision is communicated to her."

#### **Case No. CUB-290. (10 September, 1947)**

**Held:** That a claimant must be totally incapacitated for work of any type before an extension of the two-year period can be granted for incapacity.

The material facts of the case are as follows:

The claimant applied for extension of the two-year period on the ground that he had been incapacitated for work from September 1945 to April 11, 1947 and the insurance officer did not grant the extension, being of the opinion that the claimant had not proven incapacity for a specific period, as the medical evidence which was furnished by the Department of Veterans' Affairs stated merely that he had applied for treatment. The court of referees, by unanimous decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me, the question to decide is whether during the period in question, namely from September the 28th, 1945 to the date on which he filed his claim, April 11, 1947, the claimant was incapacitated for work.

"According to sub-section (3) of Section 28

"If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in the first statutory condition,

(a) incapacitated for work by reason of some specific disease or bodily or mental disablement

the first statutory condition and section thirty-one of this Act shall have effect as if, for the period of two years therein referred to, there were substituted a period of two years increased by such periods of incapacity or of such employment or business engagement but so as not to exceed in any case four years.'

"In the present instance, the claimant has not been able to adduce satisfactory medical evidence of his incapacity. Such being the case, he has not discharged the first responsibility that would relieve him of disqualification under Section 28(3) of the Act.

"In decision CUB-140, under date of the 9th day of October 1946, I stated as follows:

"If a claimant desires to obtain the benefit of this section of the Act, he must be incapacitated for work or in other words, he must be in a position where he is unable to follow any kind of employment."

"Under the circumstances and in accordance with the above quoted decision, I must uphold the decision given by the court and dismiss the appeal of the claimant."

#### **Case No. CUB-291. (22 September, 1947)**

*Held:* That a claimant who accepted employment as a stock clerk at a salary of \$25.00 per week, which was later increased to \$32.00 per week, had not established just cause for voluntarily leaving this employment by the plea that his salary was insufficient to meet his living expenses, and that he had moved to another city where he hoped to obtain employment.

The material facts of the case are as follows:

The claimant, a married man, aged 41 years, was employed as a stock clerk with a wholesale grocery in S..... where he had worked for thirteen months. He left his employment in order to go to T..... in the hope of obtaining employment, because, he stated, the cost of living was too high for the wages received. He had commenced working at \$25 a week and at the time of leaving was receiving \$32 a week, although he had asked repeatedly for another increase. The insurance officer disqualified him for a period of six weeks on the ground that he had voluntarily left his employment without just cause. The claimant appealed to a court of referees, before which he appeared, and submitted that he had tried without success to obtain another position before leaving his employment in S....., and had finally come to T..... when he heard that a plant was being established there. The court unanimously reversed the decision of the insurance officer, considering that unusual circumstances existed and that CUB-22 applied.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The question to decide is whether the claimant had just cause to voluntarily leave his employment.

"From the facts and submissions, the claimant, in June 1946, accepted work as a clerk at a salary of \$25.00 per week. Two months

later, he was given an increase of salary of \$7.00 per week. Then, on May 1947, he voluntarily left his employment.

"The claimant's employment was permanent in nature and at the prevailing rate of pay in the district. He had agreed to work under certain conditions and the evidence indicates that not only were they observed by the employer but, in fact, the latter gave him an increase of salary.

"Under such circumstances, he should not have left his work without having previously the assurance of securing other employment.

"The claimant has failed to show good cause for having voluntarily left his employment. The decision of the court of referees is therefore reversed and the appeal of the insurance officer is allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him.

"I wish to point out that the court has given to decision CUB-22 an erroneous interpretation."

### **Case No. CUB-293. (30 October, 1947)**

**Held:** That a claimant, whose usual occupation was that of day-time cashier, and who, being unemployed and a benefit recipient, accepted employment as a cashier, working from 6:00 to 9:00 p.m., at a daily remuneration of \$1.50, was not deemed not to be unemployed within the meaning of Section 29(1)(b) of the Act. There is no restriction on the occupation which an insured person may follow as a subsidiary occupation. CUB-114 referred to.

The material facts of the case are as follows:

Prior to going on benefit on April 1, 1947, the claimant had worked as a cashier, her usual occupation, in a canteen at a dockyard, her hours of work being from 7.00 a.m. to 4.00 p.m. On May 15, 1947, she accepted employment as a cashier in a theatre at a salary of \$1.50 a night, her hours of work being from 6.00 to 9.00 in the evening, six days a week. The insurance officer disqualified her on the ground that she was not deemed to be unemployed within the meaning of the Act, the disqualification to last until she proved that she was unemployed. The claimant appealed to the court of referees, contending that she was unemployed during the day and available for any employment and that the work which she did at the theatre could have been done if she had had a regular daytime job, and also that she did not earn in excess of \$1.50 a day, and, consequently, that she should be entitled to benefit. The court unanimously allowed the claim.

The insurance officer appealed to the Umpire, quoting the following excerpt from CUB-30 which he considered to be applicable:

"There may have been no night work of precisely the same kind as the claimant had been performing available in the city, but there might have been night work as a cashier or other clerical help in a restaurant, theatre or other similar enterprise. Clerical night work is a normal occupation and not an unusual sphere of activity . . ." and stated further in part:

"It is respectfully submitted that the court of referees in this case has erred in its interpretation of Section 29 (1)(b) and that to interpret the section in this way would, during a depression period,

permit an employer to utilize the Fund to his own particular advantage, i.e., an employer could continue employing some of his employees during their usual work in other than usual hours knowing fully well that so long as he does not pay the employees more than \$1.50 per day each employee could draw unemployment insurance benefit for the hours in which he usually worked."

## DECISION

The appeal was dismissed.

"I am asked by the insurance officer to decide whether the word 'occupation' in the above quoted section should not mean an occupation different from that of a usual employment.

"I have already given my opinion on this question in decision CUB-114, where I stated:

"This wording does not restrict an insured person as to the type of work he shall perform outside the hours of the ordinary working day. It permits an insured person to follow whatever occupation he is capable of performing . . .

"Had it been the intention of the Act to restrict an insured person as to the type of work he should follow outside of his ordinary working hours, reference undoubtedly would have been made to same in the Act."

"The insurance officer has not submitted any valid reason which would induce me to deviate from this interpretation.

"If the Commission apprehends that the present wording of section 29(1)(b) might lead to certain abusive practice, then representation should be made to the proper authorities competent to bring about amending legislation.

"In order to avoid the repetition of such appeals on question already decided, as the Act expressly says that the decisions of the Umpire are final, I would suggest that an appropriate publicity be given to this decision as well as to decision CUB-114.

"The decision of the court of referees is upheld and the appeal of the insurance officer is dismissed."

## Case No. CUB-295. (30 October, 1947)

**Held:** That good cause for delay in making claim for benefit was not shown by a claimant who was busy attending union meetings and who had been away from the city for part of the period for which antedating was requested. The sales representative of the claimant's ex-employer was found to be eligible to sit on the court of referees.

The material facts of the case are as follows:

The claimant lost his employment as a sheet metal worker at an industrial plant on February 21, 1947 because of a stoppage of work due to a labour dispute. A general resumption of work took place on June 12, 1947 and he made claim for benefit on June 30, requesting antedating of his claim to June 12. He gave as his reasons for delay in making claim that he was president of the union and had been very busy attending meetings, and also that he had been out of town on

business. The insurance officer did not approve the request for ante-dating, and the court of referees unanimously upheld this decision, being of the opinion that the claimant was not available for work during the period in question and that good cause for delay in making claim had not been shown.

The union of which the claimant was a member appealed to the Umpire, and also questioned the constitution of the court of referees because the employer representative was connected with the industrial plant which was engaged in the labour dispute.

## DECISION

The appeal was dismissed.

"The union questions the constitution of the court of referees which heard the case in Ottawa, on August 18, 1947, because 'the employer representative, ...., is directly connected with the ..... with which they are engaged in a labour dispute'.

"Paragraph 5(c) of Section 16 of the Benefit Regulations dealing with the grounds for disqualification reads as follows:

"'5. No person shall be a member of a court during the consideration of a case

(c) in which he has taken any part either on behalf of an association, or as an employer, or as a witness, or otherwise.'

"According to the information before me, Mr. ...., who sat for the employers in the court of referees, is the special representative of sales of the [industrial plant] but it has not been shown to my satisfaction that he has taken any part in this case either on behalf of an association, or as an employer, or as a witness, or otherwise. Moreover, the facts of the case are self evident and the unanimous decision of the court of referees is well founded.

"The appeal is dismissed."

## Case No. CUB-296. (31 October, 1947)

**Held:** That the intention of a married woman, whose husband was away from home serving in the navy, to live with her grandparents in another city did not constitute just cause for leaving her employment voluntarily.

The material facts of the case are as follows:

The claimant, a married woman, aged 21 years, was employed as a stenographer by an automobile manufacturing firm on the eastern coast, from March 1947 to April 29, 1947 at a salary of \$25 a week. She made claim for benefit on May 6, 1947, reporting that she had voluntarily left her employment because her husband, who was in the navy, had been drafted to the West Coast and she had moved to another province in central Canada to live with her grandparents. The insurance officer disqualified her for a period of six weeks on the ground that she had voluntarily left her employment without just cause, and the court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The question to decide is whether the claimant has shown good cause to voluntarily leave her employment.

"The claimant would not remain alone in H..... after the transfer of her husband to the West Coast. She left her employment not because she wanted to follow her husband but because she desired to reside with her grandparents in C.....

"The claimant, as an individual, might have had good personal reasons to take this course of action; but as an employed person, insured under the Act, she has not shown just cause for voluntarily leaving her employment and she was not justified, as such, under the circumstances, in throwing herself on to the unemployment fund, when she had suitable employment in H..... and no definite prospect of getting work in C.....

"The court of referees erred in their decision and the appeal of the insurance officer is allowed. The claimant is disqualified from receipt of benefit, for a period of six weeks, as from the date that this decision is communicated to her."

### **Case No. CUB-297. (31 October, 1947)**

**Held:** That employment as a catering assistant was suitable for a woman who had been unemployed for more than six months and whose usual occupation was that of an office clerk.

The material facts of the case are as follows:

The claimant, a single woman, aged 46 years, separated on November 23, 1946 from her employment as a clerk with the Dominion Government, where she had worked for four and one-half months at a salary of \$127 a month, and her claim for benefit was allowed. She had previously worked for ten years for the British Government, in a clerical capacity. On June 4, 1947, she was notified of employment as a catering assistant at the prevailing rate of pay of \$15 for a 48-hour week. She refused to apply for this employment, stating that she had had no experience in this line of work, that the salary was less than half of what she had been receiving, and that she was on call for an appointment in the Civil Service. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment, and the court of referees, before which she appeared, unanimously upheld this decision.

The chairman of the court granted the claimant leave to appeal to the Umpire.

## DECISION

The appeal was dismissed.

"According to her own statement, the claimant was released 'as all other clerical positions were being filled by veterans, many already employed in the department'. She had been unemployed and on benefit

for more than six months, when she was notified of work as a catering assistant, at the prevailing rate of pay in the district. During those six months or so, she had not been able to secure work in her usual occupation in the Civil Service on account of the conditions which she has outlined in her statement.

"Under the circumstances and in accordance with section 40(3) of the Act, if the claimant is genuinely seeking work and wishes to remain in the labour field, she should have accepted the employment notified to her.

"The claimant, therefore, has without good cause refused to apply for suitable employment.

"The decision of the court of referees is upheld and the appeal of the claimant is dismissed."

#### **Case No. CUB-298. (31 October, 1947)**

**Held:** That employment as a sales clerk was suitable for a stenographer who had been unemployed for nearly three and one-half months.

The material facts of the case are as follows:

The claimant made claim for benefit when she became separated on April 7, 1947 from her employment with an armament manufacturing company, where she had worked as a typist and stenographer for a period of six years, her salary at the time of separation being \$30 a week. Her claim was allowed and on July 18, 1947 she was notified of employment as a sales clerk with a ladies' dress shop, at a salary of \$20 a week, 8 to 10 hours a day. The prevailing rate of pay for the district was \$12 a week. She refused to apply for the situation because it was not in her usual line of work, and stated that she expected to obtain before long a position which would be suitable. The insurance officer was of the opinion that she had refused without good cause to apply for a situation in suitable employment, and disqualified her for a period of six weeks. The claimant appeared before the court of referees, which by a majority decision upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The question to decide is, whether the claimant has refused, without good cause, to apply for a situation in suitable employment.

"The claimant was notified of employment, in her own home town, as a sales clerk, at a salary which, according to the submissions, was above the prevailing rate of pay in the district for that kind of work. She had been unemployed for a period of approximately three months and had not been able to re-establish herself in her usual occupation of a typist or stenographer. In fact, the evidence tends to indicate that the claimant had not made any serious attempt to find work, but had rather relied exclusively on the employment office.

"Subsection 3 of Section 40 of the Act reads as follows:

"After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the

case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"Under the circumstances, I agree with the court of referees, which was unanimous in its finding on the merit of the case, that the claimant refused, without good cause, to apply for a situation in employment suitable within the meaning of Section 40(3) of the Act.

"I also agree with the majority of the court, as to the period of disqualification imposed. There are no extenuating circumstances, in this case, which would justify a reduction of this period of disqualification.

"The decision of the court of referees is therefore upheld and the appeal is dismissed."

#### **Case No. CUB-301. (31 October, 1947)**

**Held:** That statements given by experts, (e.g., medical certificates), although very useful in reaching a conclusion on the merit of a case, are in no way binding. The nature of these statements must be scrutinized very carefully. A claimant whose refusal to apply for suitable employment was based on an alleged physical incapacity to perform the work was disqualified although he produced a medical certificate.

The material facts of the case are as follows:

The claimant left her employment as a label sticker in a chain variety store on May 17, 1947, in order to be married, and made claim for benefit on July 15, 1947. On the same date she was notified of employment as a fountain waitress in a chain tobacco store at a salary of \$15 a week, which was the prevailing rate for the district. She refused to apply for the employment, stating that she used to do that type of work but had found it too hard and had been discharged. The insurance officer was of the opinion that she had refused to apply for a situation in suitable employment and disqualified her for a period of six weeks. The claimant submitted a medical certificate to the court of referees, which read as follows:

"This is to certify that I have examined the claimant today. The claimant affirms that she is unable to perform any work where she would have to stand up for any length of time. I know her state of health and I am justified in believing her declaration. She would be ready and able to accept any situation which would not involve the above-mentioned circumstances."

The court unanimously upheld the decision of the insurance officer, considering that the medical evidence did not justify the claimant's refusal to apply for suitable employment.

The chairman granted the claimant leave to appeal to the Umpire, in order that it might be decided whether or not a court of referees has the right to interpret a medical certificate or to appraise its meaning,

or whether it should be accepted as written, without questioning the opinion given by the physician.

## DECISION

The appeal was dismissed.

"Statements given by experts in support of any contention, although very useful in reaching a conclusion on the merit of a case, are in no way binding. The nature of these statements, however, must always be scrutinized very carefully.

"In the present instance, the court of referees, which had the opportunity of hearing the claimant, came to the unanimous conclusion that under the circumstances 'the medical evidence produced before the court was not such as to justify her refusal of employment.'

"This is a factual case and I do not see any valid reason to interfere with this decision of the court of referees.

"The appeal is dismissed."

## Case No. CUB-302. (31 October, 1947)

**Held:** That employment as a sales clerk was suitable for a professional musician who had been unemployed for nearly three months, and who during the past thirty-eight months had been employed for only 284 days and had received benefit for 329 days. A claimant's employment history is an important factor in determining suitability of employment. Section 40(3) of the Act must apply to all insured persons. This claimant was unemployed although she continued practising daily and had to be at home during the daytime to await telephone calls for musical engagements. She was not available for employment because she insisted on working only as a professional musician.

The material facts of the case are as follows:

The claimant, a married woman, registered for work as a pianist, was last employed in a theatre as an orchestra pianist from November 8, 1946, to April 3, 1947, at a salary of \$40 a week. Her hours of work were from 9.00 p.m. to 12.00 p.m., six nights a week.

On June 28, 1947, the local office notified her of part-time employment for the summer months as a sales clerk in a department store, which would have given her from three to five and one-half days' work a week. The hours of work were from 9.00 a.m. to 5.00 p.m., and the wage was \$3.25 a day, the prevailing rate of pay for the district. The claimant refused to apply for the employment, stating that she had never worked except as a musician, that since her marriage three years before she had done musical work in the evenings, and that if she went to work in the daytime and did her housework in the evening she would not have time to keep in practice. Moreover she had to be at home in the daytime to take calls for musical work, and could not leave her small daughter during the day.

The claimant's employment for the last six years had been as a musician in various theatres and in 1944 and 1945, during the summer season, at a summer resort nearby. Her first claim for benefit was made on April 18, 1944, and since then she had received 329 days' benefit and was now in her third benefit year. During the same period

284 contributions were paid on her behalf but she was incapable of work from August 1945 to February 1946.

The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment. The claimant appealed to a court of referees which, by a majority decision, upheld the decision of the insurance officer and imposed an additional disqualification for non-availability, and also disqualified her because she was not unemployed within the meaning of the Act.

The claimant appealed to the Umpire and representations were made on her behalf by officials of several unions.

#### DECISION

The appeal was dismissed with the exception that the Umpire found that the claimant was unemployed.

"The claimant, as well as the unions on her behalf, contends that in view of the fact that she has last been unemployed only for a period of less than three months, she should not be forced into such a drastic change of occupation as from that of a musician to that of a sales clerk entailing a considerable reduction in salary.

"The first question to decide is whether the claimant is unemployed within the meaning of the Act, because should the facts indicate that she is employed, the case ends there, and no other question needs to be discussed.

"A careful perusal of the evidence before me brings me to a conclusion different from that reached by the court of referees as to the self-employment or employment of the claimant. I, altogether, fail to see how she could be considered as being not unemployed in view of the circumstances of her case.

"The second question to determine is whether the employment notified to the claimant was suitable employment within the meaning of the Act.

"Section 40(3) of the Act reads as follows:

"'After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"According to the submissions, the employment offered to the claimant was at a rate of wages not lower and on conditions not less favourable than those recognized by good employers. The question remains then as to whether a reasonable interval elapsed within the meaning of Section 40(3) of the Act in order that employment of a kind other than employment in the claimant's usual occupation could be, in her case, deemed suitable.

"To determine such a question, many factors have to be taken into consideration; one of them, and not the least in importance, are the facts disclosed by the claimant's employment history. These indicate that the claimant, during the last three years, has not been able to secure continuous employment in her occupation, but has worked only intermittently and, in fact, has received benefit for a period of 329 days.

"Under the circumstances, it would be reasonable to expect that, if the claimant were genuinely seeking work, she should have accepted this temporary employment for the summer season as, according to the submissions, there was very little prospect for her to get work as a musician during this period. It would not, in any way, have jeopardized any opportunity of returning at some future time to her usual occupation.

"Section 40, paragraph 3 of the Act, as above quoted, must necessarily apply to all insured persons, including those who follow a highly skilled occupation. Otherwise, the mass of workers who contribute to the fund would be greatly prejudiced.

"I agree with the court of referees that the claimant has, without good cause, refused to apply for suitable employment.

"The third and last question to decide is whether the claimant is available for work within the meaning of the Act.

"According to her own admission, the claimant will not accept any other work than that of a musician for various reasons which she has described in her statements. The evidence indicates that she has failed to find employment as a musician for the last three months and that there is little prospect of getting any for a few months. Therefore, I am in accord with the decision of the court of referees that the claimant has so restricted her sphere of employment as to be deemed not to be available for work within the meaning of the Act."

#### **Case No. CUB-304. (31 October, 1947)**

**Held:** That a claimant who alleged that upon commencing employment she had been promised an increase in pay at the end of three months and instead was laid off at that time, and who was rehired ten days later, did not have just cause for voluntarily leaving her employment three months afterwards because she did not receive any increase in pay. There were two contracts of service and there was no breach of the second contract.

The material facts of the case are as follows:

The claimant was employed by a mail order house as a shopper and sales clerk, at a wage of 36 cents an hour, from November 19, 1946 to February 26, 1947, when she was laid off. When she made claim for benefit she said that she had lost her employment due to shortage of work and this statement was verified by the employer. On March 7, 1947 she was re-engaged by the same employer in the same capacity and at the same wage until she left voluntarily on June 30, 1947. She made claim for benefit on July 3, 1947 and reported that when she had commenced her employment she had been promised an increase in pay in three months but had not received it, also that as she worked Saturday afternoons she wanted an afternoon off each week, but the employer wanted her to take a three-hour period off in the morning. The insurance

officer disqualified her for a period of six weeks on the ground that she had voluntarily left her employment without just cause, and the court of referees, by a majority decision, upheld this decision, being of the opinion that there were two contracts of service, the first of which terminated when she separated from her employment on February 26, 1947, and that there had been no breach of the second contract.

The claimant appealed to the Umpire and submitted that she had been laid off at the time of her first separation because she had asked three times for an increase in wages, which she alleged had been promised to her, and that the following week the employer had requested her to return to work. Upon doing so, she found that she was not going to receive the increase, and her dissatisfaction was increased by the fact that a girl who was working with her was receiving 40 cents an hour for the same type of work.

#### DECISION

The appeal was dismissed.

"The question to decide is whether the claimant had just cause to voluntarily leave her employment.

"The claimant alleged a breach of contract as her main reason for having voluntarily left her employment; according to her statement, she had been promised an increase of pay which was refused to her.

"This is a factual case; there is no point of law involved. The claimant had the opportunity of giving evidence before the court of referees which also heard the employer's representative. However, she failed to prove her contention to the satisfaction of the court and was held to have voluntarily left her employment without just cause.

"Under the circumstances, I do not see any valid reason to interfere with the decision of the court of referees.

"The appeal is dismissed."

#### Case No. CUB-305. (28 November, 1947)

*Held:* That employment is not unsuitable only because the hours of work interfered with a claimant's domestic responsibilities.

The material facts of the case are as follows:

The claimant, married and 36 years of age, was employed as a stitcher in a bindery for the month of September, 1946, at a salary of \$20.00 per week, working from 7:45 a.m. to 5 p.m., five days a week. Her renewal claim for benefit, made on April 3, 1947, was allowed. She registered for employment as a sales clerk.

On June 20, 1947, the local office notified the claimant of employment as a sales clerk in a retail store. The work was permanent, the rate of pay was \$16 per week, the reported prevailing rate for the district, and the hours of work were from 9 a.m. to 5:30 p.m. one week, and from 9:30 a.m. to 6 p.m. the next week. The claimant refused to apply for this position, saying that the hours of work did not suit her as she had a school-age son. The insurance officer disqualified her from receipt of benefit for a period of six weeks for this refusal. The

claimant appealed to a court of referees on the ground of unsuitability of the hours involved. The court unanimously held that the employment was not suitable, and allowed the appeal.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The claimant was notified of employment in her registered occupation, which entailed normal working hours and was at the prevailing rate of pay in the district. According to the submissions, it is difficult for married women to obtain employment in the district where the claimant resides. Under these circumstances, it would be reasonable to expect that if the claimant were genuinely seeking work, she should have been prepared to immediately accept suitable employment when notified to her and accordingly adjust her domestic circumstances.

"I find therefore that the claimant has, without good cause, refused to apply for suitable employment.

"The decision of the court of referees is reversed and the appeal of the insurance officer is allowed. The claimant is disqualified from receipt of benefit for a period of six weeks, under section 40(1)(a) of the Act; this disqualification to take effect on the day upon which this decision is communicated to her."

## Case No. CUB-306. (28 November, 1947)

**Held:** That a pressman who had complained to his employer of lack of co-operation from his foreman, and whose grievance was not remedied, had just cause for leaving his employment voluntarily. Although the claimant and his wife were joint owners of a store, it appeared that the latter could do all the necessary work in connection with the operation of the store, and as the claimant's earnings therefrom did not exceed an average of \$1.50 per day he was not deemed to be not unemployed while working in the store during a period in which he was otherwise unemployed.

The material facts of the case are as follows:

The claimant was employed as a pressman for approximately three months terminating on June 10, 1947, and on making claim for benefit on July 2, 1947 stated that he had left his employment because of lack of co-operation from his foreman. The employer's story was that the claimant was advised that he would have to work nights for approximately six months, but that the alternative of two weeks' day work and one week's night work was offered to him, and that he refused this arrangement because, he stated, he would rather work nights so that he could look after his store in the day time. The insurance officer was of the opinion that the claimant had voluntarily left his employment without just cause and disqualified him for a period of six weeks.

The claimant appealed to a court of referees and explained that the store, which was a small one, was owned by himself and his wife jointly, but was operated by her. He stated that it was not necessary for him to be in the store and that he was available for work. The district investigator reported that business was so poor due to nearby

competition that the claimant had put the business up for sale, that apparently the claimant's wife could take care of whatever business there was, and that the claimant definitely preferred day work. The latter gave particulars of the lack of co-operation received from the foreman and told of his efforts to have his grievances rectified by reporting the matter to the employer. These statements were verified by the employer, who said that he was under the impression that the difficulty had been straightened out, and expressed his willingness to discuss with the claimant the question of further employment. The court of referees was requested by the insurance officer to give consideration to the question of whether or not the claimant was unemployed at the time he made his claim for benefit. The claimant appeared before the court, which found that he had just cause for voluntarily leaving his employment, and that he was available for employment on July 2, 1947, but disqualified him on the ground that he was not unemployed, the disqualification to last so long as he continued to be a partner in the business.

The chairman of the court granted the claimant leave to appeal to the Umpire, and the claimant stated in his submission that he had gone back to work for his former employer, the cause of the trouble, the foreman, having been removed.

#### DECISION

The appeal was allowed.

"I am asked to decide whether the claimant, from July 2, 1947, to September 3, 1947, could be deemed to be self-employed.

"'Cases like the present one, where the question of self-employment is raised, must be appreciated on their own merit, taking into consideration all the circumstances shown by the evidence.'

(CU.-B.264)

"In this instance, the evidence indicates that the claimant and his wife are co-owners of a grocery store. This in itself is not sufficient to establish that during the above-mentioned period, the claimant was self-employed.

"Whilst employed by.....Co., the claimant, during his spare hours, used to assist in the grocery store which, according to the submissions, had been put up for sale in March 1947. Upon separation from work in June 1947, he helped out in the store, during his ordinary working hours, in order to fill up the gap of his period of unemployment. There is no indication that he ever had the intention of becoming self-employed; in fact, he followed an occupation which 'could ordinarily be followed by him in addition to, and outside the ordinary working hours of his usual employment'.

"Had the conditions not been such as to cause his voluntarily leaving in June 1947, which, according to the decision of the court of referees, was justified under the circumstances, the claimant would no doubt have remained in the employ of the.....Co. In fact, when the conditions were changed, he returned to work for that firm.

"The court of referees also found that the claimant was available for work on July 2, 1947 and there is nothing to show that he did not remain available during the whole period of his unemployment.

"I find, therefore, that the claimant cannot be deemed to have been self-employed from July 2, 1947 to September 3, 1947.

"The claimant, however, was engaged in subsidiary employment within the meaning of section 29(1)(b)(ii) of the Act and consideration must be given to the amount of profit he derived from this occupation.

"I am satisfied, from the nature of the evidence before me, that his fair daily average earning, spread over his period of unemployment, could not have exceeded \$1.50 a day.

"Therefore, the appeal is allowed."

### **Case No. CUB-307. (28 November, 1947)**

**Held:** That a married woman who had voluntarily left her employment to follow her husband who made his home in a small town in which there was little likelihood of her being able to secure employment, and who, after being unemployed for three months, expressed her inability to accept work in other than her home town, was not available for employment.

The material facts of the case are as follows:

On making claim for benefit on June 11, 1947, the claimant reported that she had separated from her employment as a telephone operator on May 12, 1947, in order to join her husband who was employed in M... Her claim was allowed.

The town to which the claimant moved was a new townsite with one main industry (Railway Guide of February, 1947, shows population 2,000) and there was very little opportunity for employment for married women. The local office wrote to her on August 18, requesting her to advise whether or not she would be prepared to accept suitable employment in some other locality, i.e., the nearest centre where employment opportunities could be expected to exist. She replied that she was not in a position to do so.

The insurance officer was of the opinion that the claimant was not available for work because she had restricted her area of employment and disqualified her until such time as she could show that she was available. The claimant appealed to a court of referees, which unanimously upheld the decision of the insurance officer but the chairman, considering that a principle of importance was involved, granted the claimant leave to appeal to the Umpire.

The claimant appealed to the Umpire, contending that although her type of work was scarce, other types of work were available and she should not be required to seek employment away from her home and husband.

### **DECISION**

The appeal was dismissed.

"The court of referees has rendered a unanimous decision according to the facts placed before them and according to the previous decisions given in similar cases by the Umpire.

"The question of availability must be, in each case, determined by the special circumstances thereof. In this instance, the evidence discloses that the claimant has, for all practical purposes withdrawn herself from the labour field.

"The appeal is dismissed."

#### **Case No. CUB-309. (28 November, 1947)**

**Held:** That employment as a kitchen-helper was suitable for a retired railroad section foreman who had been unemployed for five and one-half months; the claimant, who lived in a hamlet having a population of approximately fifty persons, was not available for work as he refused to accept work away from home, stating that his domestic responsibilities were of such a nature that he had to be at home every night. The Umpire also dealt with an allegation that insufficient notice of the hearing before the court of referees had been given.

The material facts of the case are as follows:

The claimant, a married man, aged 65 years, was employed by a railroad company as a section foreman from 1914 to March 1, 1947, when he was retired. His claim for benefit, made on March 6, 1947, was allowed. On August 13 next the local office notified him of permanent employment as a kitchen helper in a boarding house in A....., about 60 miles from his home in L..... The salary was \$80 per month plus room and board; hours were 48 per week.

The claimant refused to apply for this situation, stating that his wife was almost an invalid, his wife's sister (who apparently lived with him), was 84 years of age and decrepit, and that in his last employment he had been able to live at home. For this refusal the insurance officer disqualified him from receipt of benefit for a period of six weeks, and also imposed a disqualification because, in his opinion, the claimant was not available for work.

From these decisions the claimant appealed to a court of referees, saying that he was unsuited for the work, that he had to be at home every night because of his wife's health, and that he had been working as a stoker from August 26 at L....., and expected to be so employed until the freeze-up. The local office has advised that L..... has a population of about 50 persons, and that there was no possibility of placing him in his registered occupation of construction labourer. His appeal was dismissed, the court holding that the claimant had refused to apply for a situation in suitable employment and that he must make himself available for work where work is to be obtained. The prospect of obtaining work at L.... was for a few days at harvest time only.

An appeal to the Umpire was made by the claimant's union on the following grounds:

1. that sufficient notice of the hearing before the court of referees had not been given;
2. that it was unreasonable to hold that the claimant, who owned his home in L.... and had lived there for many years, should move to another district where there might be a possibility of obtaining work; and

3. that the employment at A.... was unsuitable on account of its nature and of the claimant's domestic responsibilities.

## DECISION

The appeal was dismissed.

"In a letter to the regional office, dated October 23rd, 1947, the insurance officer offered the following comments:

"I do not think the complaint recorded in this appeal as to the short notice of the court hearing is warranted. As shown by the record, neither the claimant nor his representative attended the first hearing at which the matter was not disposed of, but was adjourned. While the notice for original hearing was rather short, for the adjourned hearing was almost one week in advance, which I think is ample.

"It is also noted that when making his appeal the claimant indicated that he did not wish an oral hearing."

"I agree with the insurance officer that the claimant and his representative had sufficient time to make representations before the court of referees for the adjourned hearing, had they wished to do so.

"This is a factual case. The court of referees has rendered a unanimous decision according to the facts placed before them and according to the previous decisions given in similar cases by the Umpire.

"From the evidence, the claimant has, for all practical purposes, withdrawn himself from the labour field.

"Under the circumstances, I do not see any valid reason to interfere with the decision of the court of referees.

"The appeal is dismissed."

## Case No. CUB-310. (29 December, 1947)

*Held:* That an insured person who was not entitled to vacation with pay but who was given a vacation by his employer, was disqualified from receipt of benefit under the provisions of Section 29(1)(c) of the Act, because the period was recognized as a holiday for members of his grade, class or shift at the plant where he was employed.

The material facts of the case are as follows:

The claimant worked for about two months as a lathe operator for a manufacturer of car parts and was laid off on July 25, 1947, when the plant closed down for annual vacation. He had not been employed long enough to receive vacation pay. He made claim for benefit on July 29, 1947, and was disqualified on the ground that he was not unemployed within the meaning of the Act. The claimant appealed to a court of referees, before which he appeared together with a representative of the union of which he was a member. A representative of the employer also attended. The evidence of the employer indicated that partial suspension of work for the purpose of taking an annual inventory was an established custom and the court, being of the opinion that this period should be considered as a vacation period, upheld the decision of the insurance officer.

The union appealed to the Umpire, the submission reading, in part, as follows:

"1. The inventory period mentioned in the decision of Sept. 25, 1947, cannot be considered as a vacation period since a large percentage of the employees worked during this period, and those entitled to vacation pay who worked during the inventory period received their vacations at a later date. In many cases employees who were not entitled to vacation pay were employed during the inventory period. Therefore those who did not work and who were not entitled to vacation pay should be considered unemployed within the meaning of the Act.

"This was the first year when employees were off for a two week period during inventory and cannot be held to be an established practice with the company. The inventory period was formerly a one week period. The main reason for the two week shutdown this year was due to the large number of employees with over five years' service who were entitled to two weeks vacation period; at the option of the company for the second week. The company apparently felt it was impossible to continue proper production with so many employees entitled to the two week period.

"2. The court of referees in their comments on consideration of the Agreement are in error, the Agreement states, Section 61(e) page 34 (E): All *eligible* employees shall receive an annual vacation of one week's duration. Employees receiving vacation payments in excess of the 2 per cent rate shall receive an annual vacation of more than one week at the *option of the Company*.

"This section of the agreement does not state that the plant will shut down so that all employees must take time off. It deals strictly with eligible employees in the matter of the one week's vacation. In the matter of those entitled to a vacation period of more than one week it is at the option of the Company."

## DECISION

The appeal was dismissed.

"The question to decide is whether the period between July 25, 1947 and August 11, 1947, was a recognized holiday for the claimant's grade, class or shift at the [plant] where he is employed. If it was a recognized holiday, the claimant is not entitled to benefit whether or not he was in receipt of pay during this period; this in accordance with section 29(1)(c) of the Act and previous decisions of the Umpire in similar cases.

"In the agreement entered upon by the union and the [employer], on May 7, 1947, the question of holidays is only dealt with in paragraphs 42 and 61. Paragraph 42 enumerates different public holidays which are recognized as holidays and paragraph 61 deals with employees who are eligible for vacation with pay. There is no provision in this agreement for the employees not entitled to vacation with pay.

"The employer had the option of giving an annual vacation of more than one week for employees receiving vacation payment in excess of the 2 per cent rate. In view of the large number of employees who came

within this category, he felt, as stated by the union, that it was impossible to continue proper production and he shut down his plant for a two weeks holiday. Therefore, the period between July 25 and August 11, 1947, by virtue of this option given to the employer by the terms of the agreement, became at the [plant], a recognized holiday with pay for a large part of the workers and a recognized holiday without pay for the rest of the employees of the same grade, class or shift.

"Under the circumstances, the appeal is dismissed."

#### **Case No. CUB-311. (7 January, 1948)**

**Held:** That when strike benefit was paid to striking union members who voluntarily picketed the employer's plant, (the stoppage of work due to a labour dispute having ceased), and such strike benefit was not paid as remuneration for picketing, the union members could not be considered to have been under a contract of service with the union, and were unemployed.

The material facts of the case are as follows:

The claimant was last employed as a clerk and bench fitter by a car and aircraft manufacturing company from April 15, 1946 to February 21, 1947, on which date he lost his employment by reason of a stoppage of work due to a labour dispute. The stoppage of work ceased on June 11, 1947, and a general resumption of work took place on the following day. The local of the union to which the claimant belonged maintained that the labour dispute had not terminated, and its members continued to picket the plant. The claimant did not return to work and, on June 30, 1947, made renewal claim for benefit, which was allowed.

The claimant, on being questioned by the local office on August 18 regarding his activities for the period August 11 to August 16, stated that he was unemployed and available for work, and that he had not worked or earned any money, although he had been on the picket line on August 11, 12, 13 and 15 and had received \$15.00 from the union during that period. He insisted that this money could not be construed as earnings or wages and was considered as a gift.

The insurance officer disqualified the claimant from receipt of benefit for August 11, 12, 13 and 15, on the ground that he was not unemployed on these days. The claimant appealed to a court of referees, which unanimously allowed the appeal, their decision reading:

"In regard to this appeal, the claimant was present at the hearing also his union representative together with other labour representatives. Their contention was that amounts paid to workers while on strike were purely as benefits and were not remuneration for services rendered. Such benefits are paid, according to the union representative, whether or not the workers are on picket duty. The amount paid depends upon the needs of the workers and the funds available for such benefits.

"Further, it was made clear that picket duty was entirely voluntary. Under the circumstances, the court believes that the claimant was not employed on August 11, 12, 13 and 15, 1947, and that his appeal should be granted.

"It is pointed out, however, that the decision of the court in matters of this kind would be greatly facilitated if it were definitely

decided whether or not picketing should be regarded as an occupation within the meaning of the Act and whether strike benefits should be regarded as remuneration within the meaning of the Act (Section 29(1)(b)(i) and (ii))."

The insurance officer appealed to the Umpire, stating in his submission:

"(1) While the court found that amounts paid to workers while on strike were purely as benefits and were not remuneration for services rendered, that such benefits were paid whether or not the workers were on picket duty and that picket duty was entirely voluntary, it evidently did not consider and did not make any finding as to whether or not payment of strike benefits was conditional upon the strikers being willing, when called upon, to do picket duty, especially in case of a shortage of volunteers for that purpose.

"It is submitted that in order to determine definitely whether or not payment of strike benefits was in any respect remuneration for picket duty the court should have made a definite finding as to whether or not a striker unwilling under any circumstances to do picket duty would have been paid [strike] benefit on the basis of the [strike] benefit received by the claimant while on picket duty on the days in question.

"(2) It is submitted that, even if the court rightly found that the claimant received no remuneration by reason of his services as a picketer, he was still not unemployed under the Act. In neither Section 27 nor Section 29 nor any other part of the Act is the word 'unemployed' defined. In Section 29(1)(i) the word 'remuneration' relates to remuneration received from his previous employer.

"It is submitted that upon the facts presented to the court the claimant was employed under a contract of service to do picket duty on the days in question and that he cannot be regarded as having been unemployed even if he received no remuneration in return for such employment."

An oral hearing was requested and the claimant appeared before the Umpire, accompanied by counsel for the union, as well as union officials. The Commission was also represented.

## DECISION

The appeal was dismissed.

"The resumption of work took place at the [plant] on June 12, 1947. Notwithstanding this resumption of work, the union 'persisted in its strike action' provided 'strike benefit' and maintained a picket line.

"The claimant who registered for employment and claimed benefit, was in receipt of 'strike benefit' and participated on this picket line on August 11, 12, 13 and 15. It is contended by the insurance officer that the claimant should be held to have been not unemployed on these four days.

"The issue, as outlined in his appeal by the insurance officer, covers a very wide scope; but the attitude taken by the union and its representatives, at the hearing, has considerably restricted the problem.

"The union representatives, in their oral submissions, have agreed that picketing when remunerated as such is employment. Furthermore in their written submission they stated:

"We are prepared to agree that if the claimant had been hired by his union specifically to perform picket duty, with an agreed-upon rate of remuneration, he might have been considered as employed within the meaning given by the Chief Claims Officer, because in those circumstances the union might have drawn at random from the labour market for such pickets, but, as we have stated, this was not done."

"Therefore, the case now becomes a local one with its special physiognomy.

"Has the claimant complied with the three basic conditions laid down in Section 27(1) of the Act, for the receipt of benefit, on the 11th, 12th, 13th and 15th of August, 1947? Has he proved that he was, on those days:

- "(a) unemployed;
- "(b) capable of and available for work; and
- "(c) unable to obtain suitable employment?"

"(a) Was the claimant unemployed? The appellant claims that the claimant was under a contract of service with his union to perform, with remuneration, picketing duty during that period and therefore cannot be deemed to have been unemployed.

"In answer to this contention the union, at the hearing, stated, as uncontested facts, that picket duties at the [plant] were organized on a voluntary basis and were not remunerated; that "strike benefit [was] nothing more than a form of relief or assistance . . . a gratuity based on needs . . . paid to some members and not to others who do not require it or ask for it". It was further stated that 'strike benefit' was paid irrespective of a worker's participation or not in the picket line, that 'strike benefit was not conditional on picket duty'. The Chief Reviewing Officer [Chief Claims Officer] admitted that he had no means to refute these statements.

"Under the circumstances, the claimant cannot be considered as having been under a contract of service with his union to perform with remuneration, picketing and must be deemed to have been, during that period, unemployed.

"(b) Was the claimant capable of and available for work? and (c) was he unable to obtain suitable employment? The question of his capability was not raised. Admittedly he was capable of work. Was he available and unable to obtain suitable employment? The claimant reported weekly to the employment office to register and thereby to give proof of his unemployment. There is no evidence that any employment was notified or offered to him nor is there any indication that he would have refused work had he had the opportunity of getting any.

"Therefore, the claimant must be considered as having been capable of and available for work and unable to obtain suitable employment on the 11th, 12th, 13th and 15th of August, 1947.

"The claimant having complied with the three basic conditions laid down in Section 27(1) of the Act, for the receipt of benefit, on the 11th, 12th, 13th and 15th of August, 1947, the decision of the court of referees is upheld and the appeal of the insurance officer is dismissed."

### **Case No. CUB-312. (30 January, 1948)**

**Held:** That a painter who had voluntarily left employment in order to engage in business on his own account, who had invested money in equipment for carrying on his painting business, and who stated that he expected to resume the operation of his business in the spring, was not unemployed during periods when he had no work to do. (CUB-245 and CUB-264 followed.)

The material facts of the case are as follows:

The claimant, on making claim for benefit on November 4, 1947, said that he had been self-employed as a painter from May 15 to the end of September, 1947, and that his business of painting was finished until spring, due to shortage of work and cold weather. He had been employed as a painter by a railway company at an hourly wage for about a year and a half and had left voluntarily to become self-employed. The insurance officer disqualified him on the ground that he was not unemployed, the disqualification to last until he proved that he was unemployed. The claimant appealed to a court of referees and submitted that he had been out of work since October 6, and had done everything possible to find work of some kind, including advertising in a local newspaper for painting jobs. He appeared at the hearing and informed the court that in October he had purchased the interest of his partner in the business, that he owned equipment to the value of approximately \$500, as well as a truck, and that he expected to resume operations as a painter in the spring. In the meantime, he had withdrawn his advertisement from the newspaper. The court confirmed the disqualification imposed by the insurance officer.

The chairman granted the claimant leave to appeal to the Umpire.

### **DECISION**

The appeal was dismissed.

"The court of referees has rightly applied decision CU.-B. 245 to the present case. The principle involved is also dealt with in CU.-B. 264 and in many other decisions of the Umpire.

"Under the circumstances, I do not see any reason to interfere with the decision of the court of referees.

"The appeal is dismissed."

### **Case No. CUB-314. (30 January, 1948)**

**Held:** That employment as a stenographer and sales clerk at the prevailing salary of \$90.00 per month with a working week of 45 hours was suitable for a secretary, unemployed for five and one-half months, who had previously received \$33.46 for a working week of 36½ hours.

The material facts of the case are as follows:

The claimant, married, aged 26 years, was employed as a secretary in the large city of M.... from March, 1946 to May 31, 1947, at a salary

of \$33.46 for a working week of  $36\frac{1}{2}$  hours. On October 16, 1947, she made claim for benefit in the smaller city of S....., and her claim was allowed. On November 13, 1947, she was notified by the local office of permanent employment as a stenographer and sales clerk with a retail supply firm at a salary of \$90 per month for a working week of 45 hours. The salary was reported to be at the prevailing rate in the district for that kind of work. The claimant refused to apply for this employment, and was disqualified from receipt of benefit for a period of six weeks. She appealed to a court of referees, stating that she had earned as high as \$145 a month for secretarial and sales work and that she believed that \$90 a month was not a fair salary for one of her capabilities with eight years' experience. A majority decision of the court upheld the disqualification.

From this decision the claimant appealed to the Umpire, stating that she disagreed with the local office statement that \$90 a month was the prevailing rate, and that she had informed the local office that she would accept a salary of \$120 a month, in view of the relatively low level of salaries in S.....

## DECISION

The appeal was dismissed.

"The evidence indicates that the salary offered as a stenographer and sales clerk was at the prevailing rate of pay in the district for that kind of work. It further discloses that, in S....., prospects of getting work in the claimant's usual employment are 'poor for married women'.

"Considering the length of time that the claimant has been unemployed, I feel that, under the circumstances, section 40(3) of the Act must apply.

"For these reasons, the decision of the court of referees is upheld and the appeal is dismissed."

## Case No. CUB-316. (5 February, 1948)

*Held:* That the claimant, a union member who had lost his employment because of a work stoppage caused by a labour dispute, who returned to work after the resumption of plant operations although the dispute was not settled, and who left voluntarily after working for three days, could not be relieved, under the provisions of Section 43(b) of the Act, from disqualification for voluntarily leaving his employment. He should have endeavoured to have his alleged grievance rectified. The evidentiary value of a medical certificate was assessed. (CUB-208 and CUB-301 referred to.)

The material facts of the case are as follows:

The claimant lost his employment as a punch press operator with a car and aircraft manufacturing company because of a stoppage of work resulting from a labour dispute. The stoppage of work ceased on June 11, 1947, and a general resumption of work took place on the following day, although the dispute was not settled, and members of the union concerned (of which the claimant was a member), continued to picket the premises. His claim for benefit was allowed on September 9, 1947, as from June 12, 1947, the delay being caused by inability to obtain his contribution history. In the meantime, he had returned to work for his

former employer on August 26, 1947, for a period of three days, and was disqualified for a period of six weeks as from August 29, 1947, on the ground that he had voluntarily left his employment without just cause, having informed the local office that he had left "to resume his place on the picket line".

In his submission to a court of referees, he contended that he had left his employment because to have continued to work there while the labour dispute was still unsettled would have jeopardized his union membership, and he claimed relief, under Section 43(b) of the Act, from disqualification. When he appeared before the court, however, he said that he had left because he was suffering from stomach ulcers and that this condition was aggravated when, on August 28, the foreman placed him on buffer work. The case was adjourned by the court in order to afford the claimant the opportunity to produce medical evidence in regard to his physical condition in relation to this type of work. The claimant, as well as the union representative, was present at the re-hearing of the case, and the following undated medical certificate was produced:

"[The claimant] is under my care for stomach ulcers and cannot do the present work."

The court unanimously confirmed the decision of the insurance officer, its decision reading, in part, as follows:

"[The claimant] informed the foreman not to give him work on a buffer because of stomach trouble but in the afternoon of the 28th, there being no work elsewhere for the time being, he was placed by the same foreman on buffer work which the claimant accepted without saying a word and left the premises without speaking any further to the foreman about the matter. He did not return to work since and applied for benefits . . . The claimant states that the doctor did not attend to him between the 21st of February this year to the date of the certificate which is about October 20, 1947, and instead of going to his doctor after leaving the employment voluntarily, he went to his union that same night and the next morning, he was in the picket line. Before entering the picketing duty, he had not received any remuneration or compensation from the union but that on the 29th of August, the day on which he resumed the picketing duty, he started receiving benefits from the union. It is noted that upon his application for benefit being made, the claimant states that he left his employment on the 28th to resume his place on the picket line and his 701 does not indicate any disability. He does not appear to have made any effort or any complaint to his employer upon or after being placed on the buffer, and therefore we have no evidence that this man has made any effort to remedy the grievance about which he complains. In view of the evidence and the circumstances, the court is of the opinion that the claimant has not shown reasonable or good cause for the voluntary relinquishment of his employment. His appeal is therefore dismissed."

The union appealed to the Umpire and submitted that the claimant should be relieved of disqualification by virtue of Section 43(b) of the Act and also because of the production of a medical certificate at the hearing before the court on November 7.

## DECISION

The appeal was dismissed.

"The question to decide is whether the claimant had just cause to voluntarily leave his employment.

"The attention of the court of referees was drawn to decision CU.-B.208, where I stated that the relief from disqualification provided in section 43 of the Act 'applies only to refusal to accept an employment and not to leaving employment which has been accepted with knowledge of the conditions thereof'.

"The court of referees has rightly applied decision CU.-B.208 to the present case.

"In decision CU.-B. 301, I stated:

"'Statements given by experts in support of any contention, although very useful in reaching a conclusion on the merit of a case, are in no way binding. The nature of these statements, however, must always be scrutinized very carefully.'

"The court of referees heard the claimant and the union's representative. After having carefully considered the medical evidence submitted in the light of all the circumstances of the case, they came to the unanimous conclusion that 'the claimant had not shown reasonable or good cause for the voluntary relinquishment of his employment.'

"From the evidence before me, I do not see any valid reason to interfere with the finding of the court. The appeal is therefore dismissed."

### **Case No. CUB-317. (5 February, 1948)**

**Held:** That work as a ward-aide at a salary of \$75.00 per month and one meal per day was suitable for female tracer who had been unemployed for five and one-half months and who had previously earned \$152.00 per month. She was not available for work as she had unduly restricted her sphere of employment.

The material facts of the case are as follows:

The claimant, a married woman, aged 26 years, was employed by the Dominion Government as a tracer from 1940 to March 31, 1947, and at the time of separation her salary was \$152 a month. Her claim for benefit, made on April 1, 1947, was allowed. On October 14, 1947, the local office notified her of employment as a ward-aide with a local hospital, at a salary of \$75 monthly, plus one meal a day, working eight hours a day for a 48-hour week. She refused to apply for this employment, stating that it was altogether different from her usual occupation, that she knew nothing of the work, that she had spent time and a considerable amount of money in obtaining mechanical drafting training, and that she would consider accepting a position in which she could use her hands artistically, at a lower salary than that which she had previously earned. The local office commented that she had not applied to any of the large building contractors from whom she might have obtained work in her usual occupation. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment.

The claimant appealed to a court of referees, before which she appeared, and when requested by the court to name a type of work other

than drafting which she thought she could perform, her answer was that she did not know of any. The court upheld the decision of the insurance officer and also disqualified the claimant on the ground that she had so restricted her type of employment as to render herself not available for work.

The claimant appealed to the Umpire, stating that she had told the court that she would accept any other position in any field within her ability and at a decent rate of pay—other than domestic and related work. She also said that she had registered for work as an office clerk on the date on which she signed the appeal.

## DECISION

The appeal was dismissed.

"Two questions arise:

"1. Has the claimant refused, without good cause, an offer of suitable employment?

"Paragraph 3 of section 40 of the Act reads:

"'After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"In decision CU.-B. 302, I stated:

"'Section 40, paragraph 3 of the Act, as above quoted, must necessarily apply to all insured persons, including those who follow a highly skilled occupation. Otherwise, the mass of workers who contribute to the fund would be greatly prejudiced.'

"Under the circumstances, I agree with the court of referees that the claimant has, without good cause, refused an offer of suitable employment.

"2. Is the claimant available for work within the meaning of section 27(1) (b) of the Act?

"The claimant cannot, after having been unemployed for nearly six months, restrict her field of employment as indicated in her appeal to me and still be considered available for work within the meaning of the Unemployment Insurance Act.

"I find, therefore, that the claimant is not available for work within the meaning of section 27(1) (b) of the Act.

"The decision of the court of referees is upheld and the appeal is dismissed."

## Case No. CUB-318. (5 February, 1948)

**Held:** That employment as an office clerk was suitable for a dental assistant who had been employed for only two weeks during a period of five and one-half months.

The material facts of the case are as follows:

The claimant, married and 23 years of age, was employed as a dental assistant at a salary of \$75 a month for about  $1\frac{1}{2}$  years, separating on July 20, 1946. On April 23, 1947, she made claim for benefit and was disqualified on the ground that she was not available for work. From June 30 to July 11, 1947, she was engaged in her former employment as a dental assistant at a salary of \$4 a day. On August 19 next she made a renewal claim for benefit, which was allowed. The local office notified her on September 16 of permanent employment as an office clerk at a salary of \$16.50 a week, the prevailing rate for this type of work being reported as from \$16 to \$18. The hours of work were from 8:00 a.m. to 4:30 p.m. for  $5\frac{1}{2}$  days a week. She refused to apply for this employment, objecting to the salary and to the hours of work, which she said interfered with her domestic duties. The local office commented that prospects of her return to work as a dental assistant were poor. For this refusal the insurance officer disqualified her from receipt of benefit for a period of six weeks. A court of referees by a majority decision, upheld the insurance officer's decision.

The claimant appealed to the Umpire, stating, inter alia, that from July 21, 1946 to March 31, 1947, she had been engaged in caring for a motherless child.

#### DECISION

The appeal was dismissed.

"The employment notified to the claimant entailed normal working hours and was at the prevailing rate of pay in the district for that kind of work. The claimant, however, found the hours of work inconvenient on account of her domestic circumstances and the salary too low.

"The claimant insists upon working in her registered employment as a dental assistant although in five months of unemployment, she was only able to get work as such for two weeks. According to the submissions, it is difficult for married women to find that kind of employment in the district.

"Under the circumstances, if the claimant were genuinely seeking work and wished to remain in the labour field, she should have been prepared to immediately accept suitable employment when notified to her and adjust her domestic circumstances accordingly.

"The claimant, therefore, has, without good cause, refused to apply for employment suitable within the meaning of section 40(3) of the Act.

"The decision of the court of referees is upheld and the appeal of the claimant is dismissed."

#### Case No. CUB-319. (5 February, 1948)

**Held:** That a claimant whose usual occupation was that of clerk (general), and who was registered for employment in that occupation, was not capable of work when he refused to apply for a clerical position because of a serious injury to his right wrist which, according to the medical evidence, prevented writing.

The material facts of the case are as follows:

The claimant was last employed as an upholsterer by a car and aircraft manufacturing company at a wage of 65 cents an hour from

July 30, 1946 to February 21, 1947, on which date he lost his employment by reason of a stoppage of work due to a labour dispute. The stoppage ceased on June 11, 1947 and a general resumption of work took place on the following day, although the dispute was not settled. On June 30, 1947 the claimant registered for work at the local office and on the same day was notified of employment as a desk clerk with a small hotel at a salary of \$100 a month, which is above the prevailing rate of pay in the district for that kind of work. The claimant failed to apply for this position because, he stated, it would have interfered with his union standing to accept a position where there was no union. He made claim for benefit on July 2, 1947 and was disqualified for a period of six weeks as from July 1, 1947 because he had without good cause refused on the previous day to apply for a situation in suitable employment.

The claimant appealed to a court of referees, stating, *inter alia*, that he had suffered a serious injury to his hand and had difficulty in writing, and the court adjourned in order to give him an opportunity to produce medical evidence regarding the condition of his hand on or about June 30, 1947. The case was reheard, the claimant being represented by an official of his union, and the following medical certificate dated October 6, 1947 was submitted to the court:

"This is to certify the above named suffered a serious injury on February 26, 1947. The flexor tendons of the right wrist being severed above the wrist.

"Repair effected by a surgeon on February 27th failed.

"On or about May 26th, I did a second operation on his wrist.

"Result is very satisfactory but it should be still a longer period before he can do typing or writing. Continued improvement is expected."

The court unanimously disqualified the claimant for a period of six weeks commencing July 1, 1947, their decision reading in part, as follows:

"[The union official] states that he can speak as a witness to the fact that on the 30th of June, 1947, the claimant's right hand was very badly crippled and that for all practical purposes, the claimant could not use his right hand, and [the union official] insists that he was incapable for work in the line offered . . .

"It may be said that by reason of this man's unfitness for work, the position offered was not suitable for him and that on that ground, we may say that the claimant had good cause for not applying. The only difference now is that the disqualification remains for another reason and in effect the insurance officer's decision is maintained. In rendering this decision, the court has had in mind Section 44(2) of the Act."

The union appealed to the Umpire.

## DECISION

The appeal was dismissed and the claimant was disqualified on the ground that he was not capable of work.

"The question to decide is whether the claimant was capable of and available for work when he was notified of employment on June 30th, 1947.

"Although the claimant registered for employment as a clerk and implied that he was both capable of and available for such work, when a position as a clerk was offered to him, he refused the employment claiming that he was not capable of working as such. He maintained the latter position both in his appeal to the court of referees and in his appeal to me. Accepting this as proven, the claimant must be disqualified for an indefinite period under section 27(1)(b) of the Act, until he proves capability.

"The appeal is dismissed."

**Case No. CUB-320. (5 February, 1948)**

**Held:** That a claimant, a union member, who stated that he was not available for work because of the existence of a strike at his last place of employment was not available on the day on which he made his claim for benefit, and that due to a continuation of the strike he continued to be not available for work.

The material facts of the case are as follows:

The claimant lost his employment as a storekeeper with a car and aircraft manufacturing company because of a stoppage of work resulting from a labour dispute. The stoppage of work ceased on June 11, 1947 and a general resumption of work took place on the following day, although the dispute was not settled and members of the union concerned (of which he was a member), continued to picket the premises. He made claim for benefit on July 2, 1947 but a benefit year was not established until a record of his armed service credits was received. In the meantime, the local office reported that, on being questioned on July 23, the claimant said that he was not available for work because of a strike at the plant where he was last employed. It was pointed out to him that if he could not accept a referral he was not available for work, and he replied that he fully understood this. Because of this statement, although a benefit year was later established he was disqualified by the insurance officer as from July 2, 1947, the disqualification to last until he proved that he was available for work. The claimant appealed to a court of referees and denied having said that he was not available for work. He appeared before the court with a representative of his union, and two placement officers of the Commission, and the court unanimously upheld the decision of the insurance officer in a decision which reads, in part, as follows:

"It will be noted that on the 23rd of July last, the claimant was interviewed by [the placement officers] and is alleged to have made a statement which the above named placement officers have reproduced in the report made on that day. In his reasons upon the appeal, Exhibit 4, the claimant denied such a statement and he still denies it today. The two placement officers above mentioned however with the report and the other documents in their hands state positively that the claimant on the 23rd of July, 1947 did state on several occasions on that day that he was not available for work because of a strike where he was last employed. The court takes this statement as meaning that because and so long as in the opinion of the claimant and of his union, the strike exists at the [plant] then the claimant's non-availability is co-existent. The claimant has been doing picketing off and on since the 2nd of July, 1947 and his union contends

the strike is still on and unsettled. The claimant further states that he has applied for work at the N... [another plant] but we see from his record that he actually refused work that was offered to him on the 17th of September last, therefore the court takes the view that in making his statement on the 23rd day of July, the evidence of the two employment officers must be adopted and that the meaning of such statement is that so long as he and his union contend that the said strike is on, the claimant is not available. Since the claimant has made his application on the 2nd July, 1947, he must be taken to have been and to still be non-available for work. The decision of the insurance officer must therefore be upheld and the indefinite disqualification maintained from the 2nd of July, 1947 until that condition ceases to exist."

The union appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The claimant filed a claim for benefit on July 2nd, 1947 and is alleged to have stated on July 23rd, 1947, that he was not available for work 'because of a strike where he was last employed'. The claimant denies this contention.

"This question is entirely one of fact. The court of referees heard the claimant, his representative and two placement officers from the local office. They found unanimously that according to the evidence placed before them, the claimant had, in fact, made such a statement on July 23rd, 1947. From the facts and submissions before me, I do not see any reason to differ from this finding.

"Under the circumstances, the decision of the court of referees is upheld and the appeal is dismissed."

## **Case No. CUB-321. (5 February, 1948)**

**Held:** That employment in an insured person's usual occupation, at a higher rate of wages than that which he had previously received, was not unsuitable only because the worker would have been required to leave home and go into lodgings until he had secured proper accommodation for his family, there being little prospect of his securing employment at his trade in his home city. Unemployment caused by a stoppage of work due to a labour dispute is not the unemployment contemplated by sub-section 3 of Section 40 of the Act.

The material facts of the case are as follows:

The claimant, a married man, aged 25 years, registered for work as a sheet metal worker, was last employed as a seat fitting and assembly worker by a car and aircraft manufacturer, at a wage of 75 cents an hour and lost his employment on February 21, 1947 by reason of a stoppage of work due to a labour dispute. The stoppage of work ceased on June 11, 1947 and his claim for benefit, made on July 9, 1947, was allowed.

On August 27, 1947 he was notified of permanent employment as a sheet metal worker with an aircraft manufacturing company in a city located approximately 250 miles from his home, at a wage of 95 cents an hour, which is the prevailing rate of pay in the district for that kind

of work. The work week consisted of 40 hours. The claimant was advised that his transportation costs would have been paid, also that houses in the new district were scarce but that room and board was available for \$10 to \$12 a week. The claimant refused to apply for the position, giving as his reasons:

"I have a wife and family set up here in O...., in a dwelling. If I go to T.... where houses are just as hard to get as they are in O...., it will be hard to get adjusted again. If I go there myself, I will have to support myself in T.... and my wife and family in O...., in which case it would be unsatisfactory."

The insurance officer disqualified him for a period of six weeks because he had without good cause refused to apply for a situation in suitable employment.

The claimant appealed to a court of referees, before which he appeared with an official of his union, and the court unanimously reversed the decision of the insurance officer, in a decision which reads, in part, as follows:

".... This is a married man maintaining a home in O.... with his wife and one child. In a previous decision of this day among other grounds, the court regarded the employment as unsuitable by reason that the municipal authorities in T.... warn outsiders that they must not expect any assistance and that the housing accommodation does not warrant any newcomers to endeavour to set up a home in that city. Being able to obtain living quarters is closely related to the suitability of an employment and under the circumstances here, the court believes generally speaking that it is impossible to obtain suitable housing accommodation in T.... and that the referral should not be made or that if made the consequent employment should not be deemed suitable. For those reasons the claimant's appeal is granted."

The insurance officer appealed to the Umpire, his submission reading, in part:

"When rendering a decision in this case the Umpire is respectfully requested to give a ruling as to whether a period of unemployment during a stoppage of work due to a labour dispute (as in this case February 21, 1947 to June 12, 1947) should be treated by an insurance officer in the same way and on the same basis as ordinary unemployment when considering whether or not a 'reasonable' time has elapsed within the meaning of the Act and previous decisions of the Umpire."

## DECISION

The appeal was allowed.

"The unemployment caused by a stoppage of work due to a labour dispute is not the unemployment contemplated by paragraph 3 of section 40. Paragraph 3 of section 40 meets the case where a claimant is unable, after a reasonable period of time, to secure employment in his usual occupation for reasons other than a stoppage of work due to a labour dispute. The question does not arise in this case as the employ-

ment which was offered to the claimant was employment in his usual occupation, at a higher rate of wages.

"The claimant was notified of work in T..... He refused to apply for this position on account of domestic circumstances. The claimant is married and has one child. The evidence indicates that it is difficult to get housing accommodation in T.....; room and board, however, are available at a reasonable price. I realize that having to take lodgings in T..... until he could secure proper accommodation for his family left behind in O.... would have created some hardship for the claimant, but it cannot be said that employment under such conditions should, on that account only, be regarded as unsuitable.

"The claimant had been in receipt of benefit for a month and a half when this employment in T.... was notified to him. It was permanent work in his registered occupation. The salary offered was at the prevailing rate of pay in the district and above the salary he earned in his previous employment. According to the submissions, there is little prospect for him of getting work in his usual occupation in O..... Under all these circumstances, it was reasonable to expect that the claimant would have taken the opportunity offered to him of obtaining suitable employment.

"I consider, therefore, that the claimant has, without good cause, refused an offer of suitable employment.

"The decision of the court of referees is reversed and the claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him."

#### **Case No. CUB-323. (5 February, 1948)**

**Held:** That a casual worker is entitled to benefit for days on which he is unemployed, provided that on these days he has complied with all other requirements for the receipt of benefit.

The material facts of the case are as follows:

The claimant was last employed as a porter with an express company, at a wage of 78 cents an hour. He made claim for benefit on August 19, 1947, stating that he had voluntarily left his employment because they were able to give him only one day's work a week from that date. The insurance officer disqualified him for a period of six weeks on the ground that he had not just cause for voluntarily leaving his employment. On appealing to a court of referees, the claimant said that he had been replacing men on holidays, that he was cut to one day a week and that since making claim for benefit he had been cut off entirely. The employer stated that he had been a temporary employee, working intermittently as required, that in the period August 16-30 he had received 6 days' pay, and 2 days' pay for the period August 31 to September 3. The claimant appeared before the court with an official of his union and the court unanimously removed the disqualification for voluntarily leaving and disqualified him on the ground that he was not unemployed when he made claim for benefit, the disqualification to last until he proved that he was unemployed, their decision reading in part, as follows:

"The evidence in this case is that even though the claimant was working during odd days, he continued to report to his employer

until the 7th of September, 1947. On that day, he definitely notified the employer that he would not return to work there. The reason why he then relinquished his former employment was that he had found another one with the ..... which as a matter of fact he accepted on the 9th of September, 1947 and in which he has now been occupied ever since.

"It would appear therefore that the claimant voluntarily relinquished his employment not in August but on September 7, 1947 and that in view of the fact that he had secured another situation at that time, the court is of the opinion that the claimant had good reason to relinquish his job with the ..... on the 7th of September as already stated. The court further finds that up to the 7th of September, 1947, the claimant was not unemployed so that between the 15th of August and the 7th of September, 1947, the claimant had continued in his former occupation and was paid for the time that he worked until the 3rd of September, 1947. It would appear therefore also that if other conditions warrant, he would be entitled to benefits for the period of the time between September 7th and September 9th, the first day inclusive only, because he started in his new occupation on September 9th at 1.00 p.m. It would seem that the benefit year should be established commencing only on the 8th of September, 1947 and that the evidence does not warrant establishing such a benefit year any sooner. Consequently, the disqualification imposed by the insurance officer cannot apply in this case and should be set aside."

The union appealed to the Umpire.

## DECISION

The appeal was allowed.

"The evidence indicates that the claimant was employed as a casual worker by the ..... from June 10th, 1947 to September 7th, 1947. As such the claimant was employed for a certain number of days only, during that period. On August 19th, 1947, he filed a claim for benefit.

"My decision is that the claimant is entitled to benefit for the days on which he was unemployed, from August 19th, 1947 to September 7th, 1947, provided that on the said days, he complied with all the other requirements of the Act."

## Case No. CUB-324. (5 February, 1948)

**Held:** That a claimant who voluntarily left one temporary employment for another had just cause for leaving when it was evident that he had acted in good faith in the mistaken belief that the duration of the second employment would have been longer than that of the first.

The material facts of the case are as follows:

When making claim for benefit on September 12, 1947, the claimant, a university student, reported that he had been employed as a labourer by a construction company at a wage of 90 cents an hour from July 28, 1947 to August 30, 1947, when he left this employment because, he stated, the work was nearly finished and he had received an offer to work for

the city as an enumerator. He was laid off on September 11, having earned \$73.50 on a per name basis. The construction company informed the local office that the claimant could have continued working until September 25 and the insurance officer disqualified him for a period of six weeks as from August 31, 1947, on the ground that he had voluntarily left his employment with the construction company without just cause. The claimant appeared before a court of referees which unanimously upheld the decision of the insurance officer.

The chairman granted the claimant leave to appeal to the Umpire, his submission reading, in part, as follows:

"The court tried to establish the fact, that had I not left [the construction company] I would have still been working and not had to apply for benefits, yet they had no employment to offer me. They fail to consider or even take cognizance of the fact that had the weather not been adverse and I had stayed at [the construction company] I would have applied for benefits at a still earlier date plus the fact the work took slightly longer time than what the foreman had estimated but on whose judgment I had relied. Due to high winds and rain, it was impossible to spray paint the elevator, and these had occurred several times when I was working and we were sent home without pay even though it was necessary to go 4 miles to work each morning.

"Both the jobs were of a temporary nature and I feel that I was justified in leaving one for another especially when the latter paid the best and also appeared as if it would last the longest to the best of my knowledge and would have taken till University started if it had lasted as long as it had been scheduled for and it was the job that would last the longest that I was interested in."

## DECISION

The appeal was allowed.

"The question to decide, in view of the decision given by the insurance officer, is whether the claimant had just cause to voluntarily leave his employment with the ..... Construction Co., within the meaning of Section 41(1) of the Act.

"In the claimant's estimation, the work undertaken by the ..... Construction Co., for the duration of which he was engaged, was nearly completed. In order to secure work until the re-opening of the University he took up other temporary employment. The facts indicate his previsions to be wrong.

"From the evidence before me, I am of the opinion that the claimant acted in good faith and did not voluntarily leave his employment without just cause with the ..... Construction Co.

"The decision of the court of referees is reversed and the appeal of the claimant is allowed."

## Case No. CUB-325. (5 February, 1948)

**Held:** That a claimant is not available for work while engaged in building a home for himself during normal working hours.

The material facts of the case are as follows:

The claimant, a married man, separated from his employment as a sales clerk with a hardware and lumber company for which he had worked for approximately four years, due to shortage of work, and after making claim for benefit and in response to an inquiry from the local office, he reported that he was building a house for himself with the assistance of three boys (his wife's brothers) and his own brother, but that he would accept suitable employment if offered to him. The insurance officer disqualified him as from the date on which he made claim for benefit, on the ground that he was not available for work, the disqualification to last until he proved that he was available. The claimant appealed to a court of referees, submitting that, while working for his former employer, he had lived in a company house, and that it was now necessary for him to build a house, and he reiterated his contention that he would have accepted work had it been offered to him. The court removed this disqualification and disqualified him on the ground that he was not unemployed but was self-employed, the disqualification to last until he proved that he was unemployed. Their decision reads, in part, as follows:

"The simple question is whether the claimant is self-employed. We consider that this project of building a house is of a scope more ambitious than what is contemplated by the Act as an activity in which a claimant can engage without prejudicing his claim to unemployment insurance. We consider it in a different category from an unemployed person digging his garden, or other activity of which many illustrations could be given."

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed and the disqualification re-imposed on the ground that the claimant was not available for work.

"While building his own home, during the normal working hours, the claimant could not have been genuinely seeking other work. Therefore, he was rightly disqualified from receipt of benefit by the insurance officer because he was not available for work within the meaning of the Act."

## **Case No. CUB-326. (5 February, 1948)**

**Held:** That employment as a night clerk in a hotel was suitable for a claimant whose doctor prescribed light work. Such employment, although on a trial basis and without remuneration, is employment within the meaning of the Act.

The material facts of the case are as follows:

The claimant, aged 26 years, had been employed for three years as a brakeman by a railway company, and separated in January, 1945 due to illness. When making claim for benefit on April 21, 1947 he produced a medical certificate giving a history of pulmonary tuberculosis for which he was still taking treatment as an out-patient at a tuberculosis hospital, and certifying that he was capable of work which would not

involve any physical strain—preferably of a clerical nature. His claim was allowed. On October 20, 1947 he agreed to work for a week on trial, without remuneration, as a night clerk in a hotel but left this employment after working only two nights. The insurance officer disqualified him for a period of six weeks for voluntarily leaving his employment without just cause, and the claimant appealed to a court of referees. He appeared before the court and submitted that night work was not suitable for him because he could not obtain sufficient sleep in the day time. The court, by a majority decision, found that the employment was suitable but that the claimant was not available for work.

The claimant appealed to the Umpire, submitting that he should not be disqualified for leaving the job when he was only on trial and not employed.

## DECISION

The appeal was dismissed.

"I agree with the court of referees that the employment as a night clerk in a hotel was suitable employment and that it 'can be identified with the type of work prescribed by the doctor'.

"The claimant based his appeal to me on the ground that he was not employed. This contention is contrary to the provisions of the Act and his disqualification of six weeks is confirmed."

## Case No. CUB-327. (9 February, 1948)

**Held:** That a claimant who lived where there was little likelihood of finding employment and who had made no arrangements for transportation was not available for work, after having left one employment and refused another on account of the lack of transportation.

The material facts of the case are as follows:

The claimant, a married man, 40 years of age, was employed as assistant postmaster in the town of R..... from November 24, 1932 to February 22, 1947, at a salary of \$170 per month. On March 12, 1947, he made an initial claim for benefit, stating that owing to interruptions to the bus service (his home was seven miles from R.....), he was unable to go to work and had to be replaced. His claim was allowed.

On June 9 next a renewal claim for benefit was made, in which the claimant said that he had "a garden on a 100-acre farm". He was notified, at that time, of permanent employment as a sales clerk in a wholesale store in N....., seven miles from his home, at a salary of \$35 per week. The prevailing rate of pay in the district for that kind of work is reported as being from \$25 to \$35 per week. He refused to apply for this employment, giving as his reason, "no means of transportation". The local office reported that the claimant had just obtained a colonization lot from the Province of ....., where he was settled with his family (nine children), and where there were no employment opportunities. The insurance officer disqualified him from receipt of benefit for a period of six weeks for his refusal to apply, and disqualified him

also on the ground that he was not available for work, the latter disqualification to last until he proved that he was available.

A court of referees reversed the decision of the insurance officer, the chairman dissenting, finding that the employment of which he was notified paid a salary of \$25 and that the claimant was ready to work in the town of N..... or R..... at a salary of \$35 per week at any time.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The claimant had been unemployed for approximately  $3\frac{1}{2}$  months when he was offered permanent work. According to the submissions, the salary was at the prevailing rate of pay in the district for that kind of work. Under the circumstances of this case, I agree with the insurance officer that section 40(3) of the Act must apply and that 'the situation to which the claimant was referred was suitable'.

"The claimant voluntarily left his employment because there was no means of transportation from his home to his work in R..... A few months later, he refused to apply for suitable employment in N..... also on account of lack of transportation. The claimant resides at some distance from R..... and N....., in a locality where, according to the submissions, there is very little prospect for him of getting employment. Under the circumstances, it is evident that he is not available for work within the meaning of section 27(1)(b) of the Act.

"The decision of the court of referees is therefore reversed and the original disqualifications imposed by the insurance officer are reinstated as from the date that this decision is communicated to the claimant."

#### Case No. CUB-329. (9 February, 1948)

**Held:** That just cause had not been shown by a claimant who left his employment voluntarily before making certain that new employment was immediately available for him.

The material facts of the case are as follows:

The claimant left his employment as a clerk and salesman with a distributor of barber's supplies, where he had worked for ten months, and on making claim for benefit reported that he had expected to start work as manager of a battery service but was delayed in obtaining this work due to "lack of goods". The prospective employer explained that last minute difficulties had delayed the opening of the store. The insurance officer disqualified the claimant for a period of six weeks on the ground that he had voluntarily left his employment without just cause. The claimant appealed to a court of referees, submitting that the difficulty referred to by his prospective employer was a delay "in securing a building". The court upheld the decision of the insurance officer in a majority decision, being of the opinion that the claimant's statements were contradictory and that he should have made sure that the new work was available for him before leaving his employment.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The question to decide is whether the claimant had just cause to voluntarily leave his employment.

"The claimant gave up his employment too hastily as it is evident that he had not definitely secured work with S..... Battery Service.

"Under the circumstances, the decision of the court of referees is upheld and the appeal of the claimant is dismissed."

### Case No. CUB-330. (24 February, 1948)

*Held:* That an insured person whose place of employment was temporarily closed and who accepted pay at 50 per cent of his usual rate in return for an agreement to resume work for his employer when required, although free to work elsewhere in the meantime, was not unemployed.

The material facts of the case are as follows:

The claimant was employed for ten years as a sewing machine operator by a shoe manufacturer, at a wage of 35 cents an hour and on making claim for benefit on September 6, 1947, reported that she had been laid off due to lack of work. The employer stated that she had been laid off for a few weeks, but that she would receive three days' pay each week during this period. He said also that he had made this arrangement with all employees whom he wished to retain and who had agreed to resume work when the factory re-opened. The payments would commence on September 11, the beginning of their regular work week, and would continue until business was resumed. The insurance officer disqualified the claimant as from September 6, 1947 on the ground that she was not unemployed, the disqualification to last until she proved that she was unemployed. The claimant appealed to a court of referees, claiming entitlement to benefit for three days a week for which she did not receive pay.

In the meantime, on September 24, 1947, she refused to apply for employment as a sewing machine operator at a wage of 30 cents an hour, saying that the wage was too low and that she had been offered 44 cents by a firm in a nearby town, but that she was not interested in working away from home because she expected that the shoe factory would re-open soon.

The court of referees, before which appeared the claimant and the representative of her union, unanimously upheld the decision of the insurance officer, their decision reading, in part, as follows:

"According to said agreement, she is being paid a salary of \$10.50 per week for the period during which the factory is closed and she did not bring any new evidence which would justify us to change the decision of the insurance officer."

The chairman granted the claimant leave to appeal to the Umpire, and she submitted a letter from the employer reading, in part, as follows:

"We also informed [our employees] that their pay of three days time each week would be made up and ready for them on our regular pay day, namely Friday of each week, and they could call at

our office at their convenience and pick it up; in the meantime they were entirely free to accept employment elsewhere, and need not request permission from us to do so.

"The above is the text of the agreement or understanding we had with our employees; it was a purely verbal agreement and the only stipulation was that an employee who accepted his weekly pay of three days time during the shut-down period would be morally obligated to return to his job in our plant when we needed and sent for him . . ."

## DECISION

The appeal was dismissed.

"During the lay-off period, the employees had agreed to receive half of their weekly pay and were free to work elsewhere. After that period, the employees were morally obligated to return to their work with their employer. Under this agreement, the claimant is disqualified from receipt of benefit because she is not unemployed within the meaning of Section 27(1)(a) of the Act.

"In addition, the claimant having refused without good cause suitable employment, was subject to disqualification under section 40(1) of the Act.

"The appeal is dismissed."

## Case No. CUB-331. (25 February, 1948)

**Held:** That a claimant who had left his employment in order to return to his home to make necessary preparations against cold weather had just cause for voluntarily leaving his employment but was not available for work during the period when he was thus occupied.

The material facts of the case are as follows:

The claimant left his employment as a butcher with a co-operative store in S . . . . , where he had worked for three months at a salary of \$35 a week and on making claim for benefit two days later, reported that his family resided in H . . . . , that his wife and three-month old twins were alone and that it had been necessary for him to return home, ". . . winter coming on, no storm windows or doors, no heating stove . . . ." He had been unable to rent a house in S . . . . After getting his home in shape for winter, he wrote to and also telephoned his former employer, but he had hired someone else. The employer verified the claimant's statement regarding his inability to obtain living accommodation, and stated that he was forwarding two days' vacation pay to him. The claimant returned to his former employment on November 4, 1947 and the insurance officer disqualified him for October 20 and 21 because he was not unemployed on those days, and for a period of six weeks as from October 21, 1947 on the ground that he had voluntarily left his employment without just cause. The claimant appealed to a court of referees, which found that he had just cause for voluntarily leaving his employment but that he was not available for work during the period October 20 to November 3, as he was self-employed.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"The question to decide is whether the claimant was available for work within the meaning of the Act for the period from October 20, 1947 to November 3, 1947.

"The claimant admits, both in his appeal to the court of referees and in his appeal to me, that during the above-mentioned period, he was busy 'preparing his home for the cold weather'. He was not, therefore, in a position to look for work or to accept any employment had it been offered or notified to him.

"Whilst sympathizing with the claimant, I have to agree with the court of referees that he was not available for work during the period from October 20th to November 3rd.

"The appeal is dismissed."

### **Case No. CUB-332. (25 February, 1948)**

**Held:** That an employee who refused a reasonable request to work overtime and was dismissed when she failed to give a satisfactory explanation for the refusal, lost her employment by reason of her own misconduct. Working overtime is a recognized practice in industry. Extenuating circumstances warranted a reduction in the period of disqualification.

The material facts of the case are as follows:

The claimant was employed by a manufacturer for five years as a business machine operator and, on making claim for benefit, reported that she had been discharged because she had refused to work after regular working hours. The employer said that she was dismissed because she had refused to work one evening. The insurance officer disqualified her for a period of six weeks on the ground that she had lost her employment by reason of her own misconduct. The claimant appealed to a court of referees, and the local office submitted the following statement:

" . . . the claimant declared she had previously refused to work another evening. Concerning her personal discussions she declared that her foreman had no complaint to make concerning her work, but she added she hated her foreman and that as soon as this latter approached her to say anything to her she could not prevent herself from answering him in an abrupt manner. We communicated with the employer and were informed that there was no fault to find with the claimant's work and that if this latter had to have a discussion with her foreman she ought to have spoken to him privately and not in front of the other employees."

She appeared before the court, which unanimously reversed the decision of the insurance officer, the decision reading, in part, as follows:

"We do not believe that the labour laws oblige a worker to work after the regular hours. There is nothing on the file to show that the orders were given to the claimant personally, they were of a general nature. There is nothing to show that the claimant had given any excuse to her employer refusing to come to work the evening in

question, she simply neglected to report back. It is stated in the file that the applicant's dismissal followed her first and only refusal to come back to work one evening."

The insurance officer appealed to the Umpire, commenting that the claimant's good employment record might have been considered to be an extenuating circumstance warranting a reduced period of disqualification.

## DECISION

The appeal was allowed but the period of disqualification was reduced to one week.

"The evidence indicates that the claimant received orders from her employer to report for overtime work in the evening. She stated before the court: 'He [the employer] asked us to work that evening, he told everybody to work that evening'.

"The question resolves itself as to whether, under the circumstances, these orders were of a reasonable nature.

"The decision given by the court of referees is based on the assumption that 'they do not believe that the labour laws oblige a worker to work after the regular hours'. This assumption is not founded.

"Working overtime is a recognized practice in industry. The employees of the claimant's grade or class were asked to work on the evening in question from 7:30 to 10:00 for a remuneration of \$2. The claimant had worked overtime previously when required. She also had 'missed other evenings before' but had 'given her reasons'. This time, she did not report for overtime work as requested and failed to offer any satisfactory explanation.

"I consider that the orders issued to the claimant were not unreasonable and that she lost her employment by reason of her own misconduct within the meaning of section 41(1) of the Act.

"The appeal of the insurance officer is allowed but in view of the extenuating circumstances of the case, the claimant is disqualified for a period of one week as from the date that this decision is communicated to her."

## Case No. CUB-333. (25 February, 1948)

**Held:** That a bar steward who smoked while serving customers, and who was responsible for a lack of cleanliness in the grill and for irregularities in the purchase of liquor, was discharged for misconduct.

The material facts of the case are as follows:

On making claim for benefit, the claimant said that he had been discharged on November 1, 1947 from his employment as a bartender in a hotel, after 5 years' service, but that he did not know the reason. The employer furnished the following statement:

" . . . [the claimant] was in charge of certain personnel. As such it was his duty to see that discipline was maintained, to see that the place was kept clean, and to see that the rules concerning the

clientele were observed, amongst which sometimes undesirables were found. The liquor Act holds us responsible for all and everyone of our employees and it is therefore that discipline becomes excessively important. [He] did not realize this in spite of numerous warnings."

The insurance officer referred to a court of referees the question as to whether or not the claimant had lost his employment by reason of his own misconduct.

The claimant and the employer appeared before the court and the former denied the allegation of the employer that he was responsible for the condition of the grill, contending that he shared this responsibility with a fellow-worker. The court was of the opinion that the claimant lost his employment by reason of his own misconduct and disqualified him for a period of six weeks to commence on November 16, 1947, the day following the last day for which he was paid, and also disqualified him for the period November 1 to November 14 on the ground that he was deemed not to be unemployed within the meaning of the Act. The decision reads, in part, as follows:

"In his evidence before the court of referees the claimant admitted that he had been dismissed from his employment as a bartender at the . . . Hotel after five year's service for no apparent reasons. He denied the allegations of his employer that he was responsible for the condition of the 'Grill' and he declared he shared this responsibility with a fellow worker. He finished by saying he has not worked since the 31 October 1947 and at the time of leaving his employer paid him one week's holiday pay.

"[The employer] declared he had warned the claimant many times both as to his conduct and his behaviour during working hours. He added that his manager Mr. . . . was ill and had been absent for two months from the end of September 1947. During his absence irregularities occurred in the running of the 'Grill' where the claimant was employed as steward. He noticed a lack of cleanliness and in the behaviour of the claimant who smoked cigarettes whilst serving the customers. He also noticed certain irregularities in the sale of drinks and found also that certain drinks were being sold to customers which had not been bought by the hotel. He himself, verified this by reference to his copy of the order given to the Liquor Control Commission and this confirmed the fact on many occasions, it was following these confirmations that he decided to dismiss the claimant.

"After having examined the file and heard the witnesses, the court of referees by a majority of two against one, decide that the claimant should be disqualified for a period of six weeks from 15 November 1947 under Sect. 41(1) of the Act because it appears that the claimant was discharged for cause, which in accordance with the Act is equal to voluntarily leaving without just cause and constitutes a motive for disqualification.

"The court is of the opinion that this disqualification can only be effective from 15 November 1947 because it appears from the evidence of the employer that the claimant's salary had been paid up to 14 November 1947 inclusive and for the period comprised between

the 1st and 14th November inclusive the claimant cannot be deemed to be unemployed within the meaning of Sections 27(1)(a) and 29(1)(a)(i) of the Act."

The claimant appealed to the Umpire against the disqualification imposed by the court on the ground of misconduct.

#### DECISION

The appeal was dismissed.

"I see no valid reason to disturb the decision of the court of referees, since the record indicates that the claimant was, despite repeated warnings by his employer, grossly negligent in the performance of his duties. Whether this negligence can also be ascribed to his co-employee is immaterial.

"The appeal is therefore dismissed."

#### **Case No. CUB-335. (26 February, 1948)**

**Held:** That sedentary employment as an assembler was suitable employment for a postal clerk who had been unemployed for more than three months and who was unable to stand for long periods.

The material facts of the case are as follows:

The claimant, unmarried, aged 33 years, was employed as a postal clerk at a salary of \$20 per week from October 1946 to July 17, 1947, when she became separated from her employment because of absenteeism. On July 19 she made an initial claim for benefit, and on October 24 next the local office notified her of employment as an assembler with a manufacturing firm at a wage of 39 cents per hour, with shifts of 6 a.m. to 3 p.m. one week and 3 p.m. to 11 p.m. the next week, the work being sedentary and of a very light nature.

She refused to apply for this employment, stating that she had no experience in such work and that her parents were opposed to the working hours. The local office reported that her only experience was in a small post office, and that she was unable to type. For this refusal the insurance officer disqualified her from receipt of benefit for a period of six weeks. A court of referees, by a majority decision, confirmed the disqualification. The court noted that she had not gone to see the employer in order to discuss the conditions of work or to attempt to perform the work.

The claimant appealed to the Umpire, maintaining that the employment of which she had been notified was not suitable since she was a university graduate and that the employment would not be available for two or three months. A medical certificate which she produced stated that she should not accept work which required irregular hours and standing for long periods, and that she should take her meals at regular hours at home.

#### DECISION

The appeal was dismissed.

"The evidence indicates that the employment for which the claimant refused to apply was permanent, immediately available and at a rate

of wages not lower and on conditions not less favourable than those recognized by good employers.

"I consider therefore that section 40(3) must apply in this case.

"The decision of the court of referees, which was rendered in accordance with the provisions of the Act and previous decisions given in similar cases by the Umpire, is therefore upheld and the appeal is dismissed."

### **Case No. CUB-336. (27 February, 1948)**

**Held:** That a married woman, living in a town, (population 2,000), which had a large tourist trade during the summer months and where employment was difficult to obtain except during the tourist season, was not available because of her statement that she was not available for work in the nearest centre where work was obtainable during the off-season for tourists.

The material facts of the case are as follows:

The claimant, a married woman, aged 23 years, resided in the town of B....., the population of which is 2,000 normally but which is considerably larger during the tourist season. She was employed by a transport company in B..... as an office clerk, at a salary of \$100 a month, from July 2, 1946 to October 24, 1946. Her claim for benefit, made on December 6, 1946, was allowed, and she received benefit until July 1, 1947, when she became re-employed with the same company and at the same salary. She was laid off on October 15, 1947 and on the following day made claim for benefit by mail, registering for employment as an office clerk and bank teller. Her claim was allowed and on October 24, 1947 the local office wrote to her asking if she would be available for work in the city of C....., located approximately 85 miles from B....., as an office clerk or a sales clerk. She replied that she was not available for work at that point and that she had had no experience as a sales clerk. The insurance officer disqualified her as from October 27, 1947, on the ground that she was not available for work. The claimant appealed to a court of referees, which unanimously upheld the decision of the insurance officer.

The chairman granted the claimant leave to appeal to the Umpire, permission being granted for the following reasons:

"The first question of importance is—can a married woman, who is living with her husband, be held to be not available, when she restricts her willingness to accept work to a town which has a population of more than 2,000 people? Second, the circumstances of a tourist town such as B..... are different from the facts of many cases decided by the Umpire wherein the place of residence was a hamlet or isolated point. Third, there are many similar instances relating to married women, continually arising with respect to the town of B....."

In her submission to the Umpire, the claimant contended that she was available for work in her home town and that she was just as much entitled to receive benefit this year as she had been the previous year, when the same conditions prevailed.

## DECISION

The appeal was dismissed.

"The question to decide is whether or not the claimant is available for work.

"The claimant, on October 27, 1947, stated in a letter to the local office that she would not accept work outside of B..... where she resides, in view of her domestic circumstances. B..... is a summer resort where according to the claimant's own statement 'employment during the winter season is hard to obtain'. The claimant, in fact, has been eight months unemployed and seven months in receipt of benefit between the last two tourist seasons. She is again unemployed since October 15, 1947 and there is little likelihood that she will get work in B..... during the winter.

"The claimant's refusal to leave B....., on account of her domestic circumstances, is quite understandable but it must be borne in mind that when a married woman claims benefit under the Unemployment Insurance Act, she must prove, as any other claimant, that she is available for work. Availability for work, which is one of the main requirements of the Unemployment Insurance Act for the receipt of benefit, implies being able, willing and ready to accept immediately suitable employment when offered.

"I consider that in this case the claimant is not available for work within the meaning of the Act.

"The court of referees has rendered a unanimous decision according to the facts placed before them and according to previous decisions given in similar cases by the Umpire.

"The appeal is dismissed."

## Case No. CUB-337. (27 February, 1948)

*Held:* That a claimant did not have just cause for voluntarily leaving employment at which he earned \$60 per week when he was forced to vacate his living quarters and to move his family to a city 70 miles away to live with his mother-in-law in order to obtain housing accommodation. He should have retained his employment, taking lodgings until he had secured either accommodation for his family in the city in which he worked, or employment in the city to which his family had moved.

The material facts of the case are as follows:

The claimant left his employment as a foreman (floor) with a knitting mill in the city of T....., at a salary of \$60 a week, and, on making claim for benefit a few days later, reported that it was necessary for him to move with his wife and family to S....., about 70 miles away, to live with his mother-in-law, because he had been forced to vacate the house which he had rented and had not been able to obtain other accommodation. The insurance officer was of the opinion that he had voluntarily left his employment without just cause and disqualified him for a period of six weeks. The claimant appealed to a court of referees, before which he appeared, and the court unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The claimant had suitable employment in T..... and no definite prospect of getting work in S..... As pointed out by the insurance officer, it would have been reasonable to expect that the claimant would have taken a room in T..... for himself and continued in his employment until such time as he could secure accommodation for his family in T..... or reasonable assurance of employment in S..... As an employed person, insured under the Act, the claimant has not shown just cause for voluntarily leaving his employment and was not justified as such, under the circumstances, in throwing himself unto the unemployment fund.

"The complexity of the housing situation, its numerous and varied features, make it unwise to lay down general principles of rigid application. Each case has to be decided in accordance with the special circumstances thereof.

"I have no other alternative but to reverse the decision of the court of referees and allow the appeal of the insurance officer. The claimant is disqualified for a period of six weeks as from the date that this decision is communicated to him."

### Case No. CUB-338. (27 February, 1948)

*Held:* That an aged and rheumatic claimant who had been kept in his last employment as an act of charity must prove that he is capable of work before he may receive benefit. The duty of an insurance officer in determining the capability of an insured person arises only after he has made a claim for benefit. (CUB-267 referred to.)

The material facts of the case are as follows:

The claimant, a man aged 68 years, was employed as a grain checker by a grain company at a salary of \$75 a month for ten years terminating on July 1, 1947. He made claim for benefit on October 28, 1947 and said that he had been laid off because the business was being sold. This statement was confirmed by the employer who also volunteered the information that the claimant had been paid a bonus of \$900 at time of separation. The local office made the following report:

"This claimant is crippled with rheumatism and required help to get in and out of the office and while in the office it was necessary for him to use a cane and the support of the various desks."

The employer said that the claimant had been kept on the payroll only as an act of charity and that it was difficult to say what type of work he could do in his present condition—that, in fact, he was in no condition to work. The insurance officer referred the claim to a court of referees and the court, by unanimous decision, disqualified the claimant on the ground that he was not capable of work, the disqualification to last until he proved that he was capable. The chairman of the court granted the claimant leave to appeal to the Umpire, his reasons for doing so reading as follows:

"1. This not being a six-weeks disqualification, but an indefinite disqualification, it is of the utmost importance that the bare possi-

bility of error should be excluded; unless leave to appeal is granted, the issue cannot reach the Umpire for his final decision.

"2. Whether there is sufficient or indeed any evidence to justify the finding made by the court of referees, that the claimant, by reason of physical disability, is not available for work; there was no medical evidence, the claimant did not appear in person, and in reality the only evidence is the report of the local office as to the claimant's means of locomotion within the local office, supplemented by the inference to be drawn from the employer's statement as to the reasons for maintaining the claimant in employment up until the sale of the line of elevators.

"3. The claimant, in his application for leave to appeal, says that his condition is as good as it was when he was employed by the elevator company. I believe that to be true. Is the insurance officer, under those circumstances, not estopped from saying that the claimant is not available for work when he accepted the claimant's contribution as an insured person who was working, and whose services were not terminated by reason of disability, but by reason of the sale of the line of elevators.

"4. To what extent must a claimant be incapacitated in order to justify a finding of 'not available'?"

## DECISION

The appeal was dismissed.

"The question to decide is whether the claimant proved that he was capable of and available for work within the meaning of section 27(1)(b) of the Act.

"In decision CU.-B.267, I stated:

"'When the nature of a claimant's physical incapacity is such that there is no reasonable probability to obtain or perform any work, he must be considered not capable of nor available for work within the meaning of section 27(1)(b) of the Act.'

"In this instance, the claimant's physical condition is seriously impaired. Although he was employed under such disability, it is indicated in the employer's statement that 'they kept him on their payroll only as an act of more or less charity', that 'in fact, in their opinion, he was in no condition to work'.

"The claimant failed to support his contention that he 'can satisfactorily do the work for which he made application' by any proof or medical evidence and the court of referees found unanimously that he was not capable of and available for work.

"On the facts before me, whilst the claimant is deserving every sympathy and consideration, I have no other alternative than to uphold the disqualification imposed by the court of referees which is in accordance with the intents and provisions of the Act.

"The chairman of the court of referees raised the following question:

"'Is the insurance officer not estopped from saying that the claimant is not available for work when he accepted the claimant's contribution as an insured person who was working, and whose

services were not terminated by reason of disability, but by reason of the sale of the line of elevators?"

"The answer is no, since the insurance officer has the opportunity and the duty to test the capability of an insured person, not during his period of employment, but only after he had filed a claim for benefit, when all the requirements of the Unemployment Insurance Act must be complied with.

"The appeal is dismissed."

### **Case No. CUB-339. (23 March, 1948)**

**Held:** That a single girl, working in suitable employment as an office clerk, who left her employment voluntarily to return to her parents' home because, she stated, she found it impossible to live on her salary, left without just cause.

The material facts of the case are as follows:

The claimant, a single girl, aged 21 years, was employed for about five weeks as an office clerk at a salary of \$22 a week, in the city of "X", (population about 450,000), where she had worked for more than two years, and left this employment in order to return to her parents' home in the city of "Y", (population approximately 44,000), in the same province. A week later she made claim for benefit, reporting that she had been obliged to leave her employment because her living expenses were higher than her salary. The insurance officer considered that she did not have just cause for voluntarily leaving her employment and disqualified her for a period of six weeks. The claimant appealed to a court of referees, before which she appeared, and submitted that she had found it impossible to secure a suitable place to live in "X", where she had been paying \$7.50 a week for room and \$1.50 a day for meals. The court unanimously reversed the decision of the insurance officer on the ground that due to the rise in living cost the claimant was justified in leaving her employment.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"The claimant contends that she could not meet her expenses with her salary and that it was impossible for her to find a suitable place to reside in 'X'. However, according to the information before me, the claimant's employment was at the prevailing rate of pay in the district and room and board whilst difficult to secure was available, in 'X', at the normal price.

"It is understandable that it was more convenient for the claimant to find work in 'Y' where she could live with her parents at much less expenses. However, as pointed out by the insurance officer, before leaving her work in 'X', she should have first secured reasonable assurance of employment in 'Y'. The claimant as an individual might have had good personal reasons to take this course of action; but as an employed person insured under the Act, she has not shown just cause for voluntarily leaving her employment and she was not justified as such,

under the circumstances, in throwing herself on to the unemployment insurance fund when she had suitable employment in 'X' and no definite prospect of getting work in 'Y'.

"I have no other alternative, therefore, than to reverse the decision of the court of referees and to allow the appeal.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

### **Case No. CUB-340. (23 March, 1948)**

**Held:** That a claimant whose services as a street car operator were retained despite his employer's knowledge that he was unsuited to the work, and who was subsequently discharged because he had had too many accidents, was not discharged for misconduct as it appeared that his conduct was due to inefficiency and that his carelessness was not so deliberate that it would amount to misconduct within the meaning of Section 41(1) of the Act.

The material facts of the case are as follows:

The claimant, aged 39 years, was employed as a street car operator from January, 1944 to September 11, 1947. On making claim for benefit on September 13, 1947 he said that he had been laid off because he had had an accident; the employer's story was that the claimant had been dismissed because he had had "too many accidents". The claimant then admitted that he had had two accidents during the past year, the damage in one case amounting to \$200. Further information was obtained from the employer to the effect that the claimant was unsuited to streetcar operation, that he had been warned repeatedly for having too many accidents, and that he was dismissed when he backed a streetcar through the brick wall of a car barn resulting in extensive and costly damage to the streetcar. The insurance officer disqualified the claimant for a period of six weeks on the ground that he had lost his employment by reason of his own misconduct.

The claimant appealed to a court of referees, before which he appeared with an official of his union. A representative of the employer was also present. The court upheld the decision of the insurance officer in a decision reading, in part, as follows:

"The claimant was taken on by the employer, who signed as a temporary employee because he did not possess the necessary qualifications as to height, language and appearance. He was kept on nevertheless by reason of pressure being exerted on the company as [the employer's representative] put it, but on the 11th of September, 1947, on the occasion of an accident, the result of which the car barn wall had been backed into and demolished, this according to the evidence was the culminating point of record against the employee, where some 30 accidents had been reported during the course of his employment, 5 of which accidents were of a more serious nature and in which the claimant was held to be totally responsible. The claimant appears to have been repeatedly warned against this conduct and the last time was in August, 1946, when he was told that on the next happening of that nature, he would be dismissed. The claimant claims that the last accident happened when he had to wipe something out of his eye at the same time that

he was backing his car. The majority of the court deems that it was negligence on his part to do those two things at the same time. We have no particulars of the nature of the other 4 or 5 important accidents and while we do not think that anyone would deliberately bring about an accident, yet if responsibility has been assigned to the claimant for the last 5 accidents, and the claimant does not deny that, and in view of the record, then it is unreasonable to believe that an employer can put up indefinitely with such a state of things, and therefore the employee must be taken as having been dismissed because of his conduct during and affecting his employment. For those reasons, the claimant's appeal will be dismissed."

The union appealed to the Umpire and requested an oral hearing, which was granted. Two union officials attended the hearing, as well as a representative of the Commission.

#### DECISION

The appeal was allowed.

"The question to decide is whether the claimant lost his employment by reason of his own misconduct within the meaning of section 41(1) of the Act.

"It is apparent that the claimant's work did not prove satisfactory to the company during the whole period he was in their employ. According to the employer, he had too many accidents. When, finally, the claimant backed the street car he was operating through the brick wall of the street car barn, he was dismissed.

"The employer, in his submissions, does not suggest that the claimant was guilty of wilful negligence; but to use his own words: 'he [was] unsuited to street railway operation'. Furthermore, it was admitted by the Commission representative, at the hearing, that in this case, it was more a question of inefficiency than one of wilful misconduct.

"From the facts before me, I come to the conclusion that, whilst it is obvious that the claimant lacked that amount of ability which is essential in street car railway operation and therefore was to the knowledge of his employer unsuited for his employment, there is nothing in the evidence which shows that his carelessness was so deliberate that it would amount to misconduct within the meaning of section 41(1) of the Act.

"Under the circumstances, the majority decision of the court of referees is reversed and the appeal is allowed."

#### **Case No. CUB-342. (5 April, 1948)**

**Held:** That a claimant who worked as a drill press operator and also acted as assistant forelady and who lost her employment because of a work stoppage due to a labour dispute, was not relieved from disqualification for so long as the work stoppage continued. As a drill press operator she belonged to a grade or class of workers which was subject to disqualification.

The material facts of the case are as follows:

The claimant was one of a number of persons who lost their employment with a lock manufacturing company as a result of a stoppage of

work due to a labour dispute. She made claim for benefit and was disqualified by the insurance officer for so long as the stoppage of work continued. She appealed to a court of referees, claiming relief from disqualification on the ground that she was not participating in, or financing, or directly interested in the labour dispute, nor was any member of her grade or class. She appeared before the court with three officials of her union, and a representative of the employer, and the court unanimously upheld the decision of the insurance officer.

The chairman granted the claimant leave to appeal to the Umpire because of the dual position which she occupied, (assistant forelady as well as drill press operator), she being the only one to hold such a position. He thought that it was possible that she might obtain relief from disqualification by reason of her exclusion from the bargaining agreement in her capacity of assistant forelady.

## DECISION

The appeal was dismissed.

"The question before me is whether the claimant should be included in the same category as the forelady whom the court unanimously found qualified for the receipt of benefit under section 39 of the Act.

"The following appears in the transcript of the evidence which was given before the court:

"“(Chairman): You were employed at the Company plant as a drill press operator?

"“(Claimant): That is right.

"“(Mr. . . . .): Mr. Chairman, there is a little error in that. Miss B. . . . . is not only a drill press operator. She is also assistant to Mrs. D. . . . in looking after the girls and so on. I think she possibly forgot to put that in. She is drill press operator and assistant forelady.'

"It is clear from the above statements that although the claimant might have acted as an assistant forelady, she was really employed as a drill press operator.

"The court of referees unanimously found that the claimant, as a drill press operator, did 'belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom [were] participating . . . in the dispute'.

"From the facts before me, I do not see any valid reason to interfere with this unanimous decision of the court of referees and the appeal is dismissed."

## Case No. CUB-343. (5 April, 1948)

**Held:** That employment which is available upon registration and which results in a full week's work, although for different employers, is suitable for an experienced charwoman with a history of employment for a single employer, in a city with a population of 17,000.

The material facts of the case are as follows:

The claimant, a married woman, aged 45 years, was employed as a charwoman in a bakery from July 1946 to July 8, 1947, working 36 hours per week for 50 cents per hour, in a city of 17,000 population. On November 25, 1947, she made claim for benefit, stating that she had terminated her employment because of sickness. On the day she made her claim she was notified of employment as a charwoman in a beauty salon, working half days on Wednesday and Saturday, and was also notified of permanent employment in private homes, working in the same house every Tuesday or Thursday, etc., which would have given her employment every day of the week. The pay was at the prevailing rate of 50 cents per hour.

On the claimant's refusal to apply for any of this employment the insurance officer disqualified her for a period of six weeks. She appealed to a court of referees, saying that she had previously worked for one employer and received her pay once a week; she preferred the same arrangement. The appeal was allowed, the court finding that the employment was, at the time, unsuitable.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"From this decision of the court of referees, the insurance officer now appeals to the Umpire and in his submission to me under date of February 21, 1948, states in part:

"This claimant had been unemployed from 9 July, 1947, when she registered for employment on 25 November, 1947, having last separated, she stated, due to illness . . . The claimant had previously worked a 36-hour week for one employer, and stated that she wished to secure the same type of employment again.

"The population of the City of B . . . , in which the claimant resides, is shown in the Canadian Railway Guide for 1946 as 17,383. It is submitted that few full-time positions as charwomen would be available in a city of this population, and that the court of referees erred when it decided that the employment of which this claimant was notified was unsuitable. I consider that she should have accepted it, instead of relying on the Unemployment Insurance Fund . . .

"It is submitted that the point at issue is whether or not an insured person, whose usual occupation is charwoman, is entitled to refuse, on the day on which she registers for employment, work in her usual occupation when such work involves employment by two or more employers each week, the employment being otherwise suitable."

"The question to decide is whether the claimant has without good cause refused to apply for suitable employment within the meaning of the Act.

"The claimant had been out of the labour field for approximately four months when she registered for employment as charwoman and filed a claim for benefit indicating that she was then available for work.

"The employment notified to her, on the day she applied for benefit was in her usual occupation and at the prevailing rate of pay in the district. It entailed working, however, for several employers and the claimant did not like this pattern of employment.

"It is not unusual for charwomen to work for more than one employer and the employment notified to the claimant which involved such conditions cannot, on that account only, be regarded as unsuitable.

"On the facts before me, I do not consider that the claimant has offered any serious reasons for refusing to accept the work notified to her on the day she applied for benefit. She has therefore, without good cause, refused to apply for suitable employment within the meaning of the Act.

"The decision of the court of referees is reversed and the appeal of the insurance officer is allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

#### **Case No. CUB-345. (5 April, 1948)**

**Held:** That a claimant, to whose home had been sent a registered written direction to attend at the local office for an interview in connection with employment, which direction had been received by his wife, and who failed to attend as directed, had without good cause failed to carry out a written direction.

The material facts of the case are as follows:

The claimant separated from his employment on June 25, 1947 and his claim for benefit, made the following day, was allowed. He had been employed by the Dominion Government as an investigator for a year and a half. On November 14, 1947 the local office requested him by registered mail to report to the office on November 17 for an interview in connection with employment. He did not call, as requested, and on November 20 said that he had not known of the notice. The local office reported that he had said also that probably his wife had received it and had neglected to advise him. The insurance officer disqualified him for a period of six weeks on the ground that he had without good cause failed to carry out a written direction given to him by an officer of the Commission with a view to assisting him to find suitable employment.

The claimant submitted an affidavit to the court of referees to the effect that he had not received a notice to report, and the court unanimously reversed the decision of the insurance officer, holding that the Commission should prove that the registered letter was delivered to the claimant's address.

The insurance officer appealed to the Umpire. The claimant, in a statement prepared for the Umpire, denied having admitted that his wife had received the notice in question and contended that there was no proof that it had been received. He also submitted another affidavit to the effect that he had not personally received the notice, nor had anybody, (his wife included), brought the receipt of such notice to his attention.

In view of the nature of the claimant's submission to the Umpire, written confirmation was obtained from the post office to the effect that the letter in question had been delivered on November 15, 1947 and that a receipt had been signed by the claimant's wife.

## DECISION

The appeal was allowed.

"According to section 2 of the Unemployment Insurance Regulations 1946:

"'For the purposes of the Act and these Regulations, and of any proceedings taken thereunder, any notice or other communication, which has been sent through His Majesty's Mails pursuant to these Regulations, shall be presumed, until the contrary is proven, to have been received by the addressee, if it was sent to the last address given by him'.

"The evidence before me clearly indicates that the notice to report to the local office, sent to the claimant's home address by registered mail, was received by his wife.

"The receipt of a registered letter assumes a character of unusual importance, in view of the formalities attached thereto and especially when the head of the family is out of work, receives unemployment insurance benefit and expects a call for work from the employment office. Short of very strong evidence to the contrary under the circumstances, it is not unreasonable to assume that the claimant's wife has advised her husband, without delay, of the receipt of such a letter.

"The claimant, however, contends that at no time did anybody, including his wife, bring to his knowledge the receipt of this letter. Such contention unsupported by the wife is not convincing and cannot rebut the presumption established by section 2 of the Unemployment Insurance Regulations and by the circumstances of the case.

"The claimant 'has without good cause failed to carry out a written direction given to him by an officer of the Commission with a view to assisting him to find suitable employment'. The decision of the court of referees is therefore reversed and the appeal of the insurance officer is allowed.

"I might add that the record shows that the claimant had been directed according to form 501, to report to the local office on November 17, 1947, at 11 a.m., which he also omitted to do.

"The claimant is disqualified from receipt of benefit for a period of six weeks, as from the date that this decision is communicated to him."

## Case No. CUB-346. (5 April, 1948)

**Held:** That a skilled worker, earning \$1.25 per hour, who voluntarily left his employment in a city with a population of 180,000 because he found it difficult at times to travel in winter between his place of employment and his home in a town with a population of 4,000 located 38 miles away, and who had no prospect of employment in his home town, had not just cause for leaving, no evidence having been produced to show that he had made any effort to secure temporary accommodation near his employment at such times.

The material facts of the case are as follows:

On making claim for benefit on December 8, 1947, the claimant, a married man, reported that he had voluntarily left his employment as a reinforcement steel foreman with a manufacturer of coke ovens in the city of H..... where he had been employed for a year and seven months at a wage of \$1.25 an hour, because he had moved from H..... to D....., a distance of 38 miles, the previous May, and was unable to report on time when the weather was bad, due to the fact that he had to drive this distance every day. The insurance officer disqualified him for a period of six weeks for voluntarily leaving his employment without just cause. He appeared before a court of referees, which reversed the decision of the insurance officer, the decision reading in part, as follows:

"He said that his only means of transportation was a 1939 automobile and numerous repairs had been made on same. It would be necessary for the claimant to leave D..... by bus at 7.10 a.m., so that he would be at least two hours late, as his employment commenced at 8.00 a.m. The claimant said that he had advertised in the newspapers for means of transportation to H..... from D....., but was unable to contact any person or find any one residing there whose employment was in H..... He also stated that when he left his employment at 4.30 p.m. on Thursday, December 4, 1947, it was impossible for him to drive to H..... on the 5th December because of road conditions; and on Saturday, 6th December, he was four hours travelling from his residence to his employment. The 4th December was the last day the claimant had worked, but he stated that he did not sever his employment until Saturday, 6th December, when he informed his employers it would be impossible for him to report for work due to these conditions. He said that on several previous occasions he had been unable to reach H..... because of road conditions. It is alleged by the claimant that a month previous to his separation he had registered for employment at the D..... Office."

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"According to the submissions, the claimant worked in H....., 38 miles from D..... where he resides. He voluntarily left his employment giving as his reason that suitable transportation was not available to him during the winter months.

"There is no evidence that the claimant made any effort to secure temporary accommodation in H..... for the period during which the road conditions were severe; even though this situation might have caused him some inconvenience, it would not have been an unusual one.

"He voluntarily left his employment as a skilled worker in H....., a city of 180,000 population, without any prospect of work in D....., the population of which is only 4,000.

"Under the circumstances, I consider that the claimant was not justified, as an employed person, insured under the Act, in throwing himself on to the Unemployment Insurance Fund.

"The claimant has not shown just cause to voluntarily leave his employment and the appeal of the insurance officer is therefore allowed.

"The claimant is disqualified from receipt of benefit for a period of six weeks as from the date that this decision is communicated to him."

### **Case No. CUB-347. (7 April, 1948)**

**Held:** That a high school student, who had contributed to the Fund as a full-time worker and who was later available only for part-time work for which there was but little demand, was not available for work.

The material facts of the case are as follows:

The claimant was a high school student, aged 19 years, and on making claim for benefit on November 20, 1947, he said that, although he was attending day classes, he had Friday afternoons off and was available for employment after 1.00 p.m. on Friday and all day on Saturday. He had been employed as a truck driver during the preceding two years and separated from his employment in order to return to school. The insurance officer disqualified him on the ground that he had restricted his sphere of availability to such an extent as to render himself not available for employment, the disqualification to last until he proved that he was available. On appealing to a court of referees, the claimant made a further statement that he was available for employment on evenings during the week. He appeared before the court, which unanimously upheld the decision of the insurance officer.

The chairman noted that the claimant lived in a highly industrialized area with employment available twenty-four hours a day, and granted leave to appeal to the Umpire because of the possibility that the court might have erred in finding that there was only a small demand in that area for the type of employment sought by the claimant.

### **DECISION**

The appeal was dismissed.

"As pointed out and explained by the chairman of the court of referees, the circumstances of case CU.-B. 96 are not similar to the present one. The claimant, in this instance, is available for an altogether different pattern of employment than the one in which he accumulated his contributions. He contributed to the Unemployment Insurance Fund as a full-time worker and is now prepared, as stated in his appeal to me, to accept work only on Friday afternoons and Saturdays on account of his studies. According to the court of referees, there is a small demand for that type of employment in the district and on the facts before me, I do not see any reason to differ from this finding.

"Under the circumstances as outlined in this case, the claimant cannot be held to be available for work within the meaning of section 27(1)(b) of the Act.

"The unanimous decision of the court of referees is therefore upheld and the appeal is dismissed."

**Case No. CUB-349. (7 April, 1948)**

**Held:** That a married man, the father of five children, who lived in a village, (population 650), where work was not available and who had been unemployed for five months, had refused, without good cause, to apply for suitable employment located fifty miles from his home, and was not available for work. He should have adjusted his domestic circumstances and should have been prepared to accept suitable employment.

The material facts of the case are as follows:

The claimant, aged 59 years, was employed as a locker plant attendant in a quick freezing plant at a salary of \$100 a month for approximately two years and was laid off on June 30, 1947. On July 23, 1947, having taken up residence three days previously in G . . ., (population 650), he made claim for benefit, which was allowed. On November 25, 1947 the local office notified him of employment, which would have lasted for a year, as a fireman at a military camp located 50 miles from his home town, at a salary of \$125 a month. He refused to apply for the vacancy, saying that he would not accept employment away from home. He desired work as a caretaker but the local office reported that there was no possibility of obtaining that type of employment in G . . . The insurance officer disqualified him for a period of six weeks on the ground that he had without good cause refused to apply for a situation in suitable employment, and also on the ground that he was not available for work, the latter disqualification to last until he proved that he was available. In his submission to a court of referees, the claimant contended that he could not afford to keep two homes, and that he was a severe sufferer from arthritis and rheumatism and frequently was laid up in bed, requiring at such times the help of his wife and family for as long as a week. The court removed the disqualification.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was allowed.

"The claimant has been unemployed since June 30, 1947 and in receipt of benefit since July 20, 1947. According to the submissions, he was offered employment as a labourer last September which he refused because he wanted work only in his own locality as a caretaker or janitor. However, he was not disqualified from receipt of benefit for this refusal of employment and the local office made enquiries unsuccessfully in order to find him work as a caretaker or janitor in the G . . . district.

"On November 25, 1947, he was notified of employment as a fireman in an army camp, at approximately 50 miles from G . . . He again refused to apply for this offer of employment giving as his reason that he did not want to leave his locality on account of domestic circumstances.

"If the claimant wishes to remain in the labour field, he must adjust his domestic circumstances accordingly. Like any other insured person who is receiving benefit under the Act, he must be genuinely seeking work and be prepared to accept suitable employment when notified to him.

"He refused to apply for work which was at the prevailing rate of pay, because he insists upon accepting employment only within the limit of the G . . . district, where, according to the evidence, it is not obtainable. Under the circumstances, whilst appreciating the claimant's reasons for wanting to remain in his home locality, I cannot help but come to the conclusion that he has without good cause failed to apply for suitable employment and that he is not available for work within the meaning of the Act.

"The decision of the court of referees is reversed and the disqualifications imposed by the insurance officer in the first instance are reinstated as from the date that this decision is communicated to the claimant."

### **Case No. CUB-350. (7 April, 1948)**

**Held:** That contributions made erroneously in other than class "O", for an insured person under the age of 16 years cannot legally establish his right to receive benefit.

The material facts of the case are as follows:

The claimant, aged 16, (born November 8, 1931), became separated from her employment on December 1, 1947, and on making claim for benefit it was found that contributions made on her behalf for the period covering her last employment from July 2, 1947 to December 1, 1947 had been made in error in Classes "6" and "7" instead of in Class "O". Her contributions up to and including November 8, 1947 were transferred to Class "O" and no benefit year was established because, of the contributions made on her behalf during the year immediately preceding the day on which her benefit year would have commenced, more than one-half were made at the lowest rate of contributions specified in the Second Schedule to the Act. The court of referees unanimously allowed the claim, their decision reading, in part, as follows:

" . . . there is nothing in Section 28(1)(b) dealing with contributions made *in error*, merely that 'of the contributions made . . . not more than half were made at the lowest rate . . .'"

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"There is no dispute that contributions were made in error on behalf of the claimant, in classes 6 and 7, when they should have been made in class 'O'. These contributions, made in error, cannot legally establish the claimant's rights to receive benefit.

"The appeal of the insurance officer is therefore allowed."

### **Case No. CUB-351. (29 April, 1948)**

**Held:** That insured persons must receive equal treatment in the administration of the Act. Employment as a kitchen-helper at a distance of sixty miles from his home city was suitable for an unmarried labourer, unemployed for more than three weeks, whose longest recorded period of employment was as a kitchen-helper.

The material facts of the case are as follows:

The claimant, an unmarried man, aged 49 years, was employed as a labourer with a public utility company in C . . . , at a wage of 70 cents per hour, from April 30, 1947 to December 4, 1947, when he was separated from his employment by a shortage of work. His claim for benefit, made on December 6, was allowed. On December 27 he was notified of employment as a kitchen helper with a construction company at E . . . , 60 miles away, at a salary of \$95 per month, plus room and board, with transportation paid to the job. The claimant refused to apply for this work, saying he would not take the job unless the employer paid unemployment insurance. He was assured by local office officials that the employment was insurable.

The insurance officer noted that the longest period of employment shown in the claimant's history was four and one-half years as kitchen helper while in the army during World War II. He disqualified the claimant for a period of six weeks for this refusal.

The latter appealed to a court of referees, stating that there was a woman cook on the job, with whom he knew he couldn't get along, that he would have to vacate his room in C . . . , where rooms were hard to get, and that in the spring he would be again working for the utility company. At the hearing before the court the claimant was represented by two members of the Canadian Legion, who contended that an ex-serviceman should be entitled to preferred treatment in the administration of the Act.

The court found against the latter contention, in the case of this claimant, and also found that the work was in insurable employment, and that the cook was a man. The court noted that ex-servicemen receiving \$30.41 as monthly income were willing to pay room rent while temporarily absent in hospital, in order to hold the room, and maintained that the claimant might have been prepared to pay room rent in C . . . until the spring if he desired to return to work with his former employer. The appeal was dismissed.

The claimant requested leave to appeal to the Umpire on the ground, *inter alia*, that he was waiting to be called back to his former employment, and therefore could not accept work by the month. Permission was granted by the chairman.

## DECISION

The appeal was dismissed.

"In giving permission to the claimant to appeal to the Umpire the chairman of the court of referees raised two questions:

"'1. Whether or not a returned soldier, in the administration of the Unemployment Insurance Act, is entitled to any special consideration by reason of his military service as is contended by the Officers of the . . . Branch of the Canadian Legion.'

"In the administration of the Unemployment Insurance Act, all insured persons must receive equal consideration. Under the terms of the Act, however, a returned soldier is given credit for full contributions to the Fund covering a period equal to the period of his service

after the 30th day of June 1941, if he has completed 15 weeks in insurable employment within any period of twelve months after his discharge.

"2. Whether or not an unmarried claimant, having regular employment during the major portion of the year at his established residence, should accept temporary employment during the period of lay-off involving losing his established residence or paying rent for the same the housing situation in C..... being as disclosed in the material."

"Whenever employment, suitable within the provisions of the Unemployment Insurance Act, is offered to a claimant outside his own district, he must then either, upon acceptance of such employment, bear the inconvenience of moving from his established residence, or upon refusal of such employment, be disqualified from the receipt of unemployment benefit.

"In the present instance, the court of referees, which had the opportunity of hearing the claimant, came to the unanimous conclusion that he refused without just cause an offer of suitable employment within the meaning of the Act.

"On the facts before me, I do not see any valid reason to differ from the finding of the court of referees and the appeal is dismissed."

#### **Case No. CUB-353. (29 April, 1948)**

**Held:** That a claimant who has failed to prove the contention that during a specific period of time she was incapacitated for work and therefore unable to follow any kind of employment, cannot obtain the benefit of an extension of the two-year period.

The material facts of the case are as follows:

When the claimant made claim for benefit, she applied for extension of the two-year period covering the period December 20, 1945 to October 27, 1947. She submitted a medical certificate dated October 29, 1947, reading:

"Exophthalmos.—Tumor of Orbit with Ophthalmoplegia. Off work a great deal.—Dec. 20/45 to Oct. 29/47. May now work."

The insurance officer did not approve the extension and on appealing to the court of referees the claimant produced another medical certificate dated December 3, 1947, which reads:

"This woman was unable to work more than half time approx. from December 20, 1945 to October 29, 1947. She is now able to return to work."

The court of referees approved the extension of the two-year period. The insurance officer submitted the following appeal to the Umpire:

"The medical certificate which the court of referees accepted as justification for approving the application for extension of the two-year period does not state that the claimant was incapacitated to the extent that she was unable to follow any kind of employment during the period for which the extension is desired: on the contrary it indicates that she was able to work during that period for nearly one-half of the time. In the absence of proof, showing the days

and/or periods for which she was incapacitated and unable to work I submit that the medical evidence does not justify the approval of the application for extension of the two-year period."

## DECISION

The appeal was allowed.

"I am asked to decide whether the claimant proved that from December 20, 1945 to October 27, 1947, she was incapacitated for work by reason of some specific disease or bodily or mental disablement within the meaning of section 28(3) (a) of the Act above-quoted.

"In previous decisions I stated that in order to obtain the benefit of this section, a claimant must prove that he was incapacitated for work or in other words, unable to follow any kind of employment during the period for which he requests an extension of the two-year period.

"In this case, the claimant alleged that from December 20, 1945 to October 27, 1947, she was unable to work because of injuries or illness. In support of her contention, she submitted medical evidence to the effect that during that period, she was 'off work a great deal' and 'was unable to work more than half time approximately.'

"After having considered the circumstances of the case and the medical evidence adduced, I find that the claimant has failed to prove her contention that, during the period from December 20, 1945 to October 27, 1947, she was incapacitated for work or, in other words, unable to follow any kind of employment. The claimant, therefore, cannot obtain the benefit of section 28(3) (a) of the Act and the appeal of the insurance officer is allowed."

### **Case No. CUB-355. (29 April, 1948)**

**Held:** That a claimant who failed to call at the post office and did not receive a letter from the local office in time to comply with the written direction contained therein, was not relieved of disqualification for failure to carry out the written direction.

The material facts of the case are as follows:

The claimant, married, aged 48 years, lost his employment as a labourer on September 30, 1947, and his renewal claim for benefit, made on October 9, 1947, was allowed.

On October 25, 1947, the local office sent to the claimant a written direction to report to that office on October 27, 1947, for an interview in connection with employment. He failed to report as instructed. On October 31 he explained that he lived a mile and a half from the post office, that he did not call there every day, and that he had not received the letter in time. The insurance officer disqualified him for a period of six weeks for failure to carry out a written direction given to him by an officer of the commission with a view to assisting him to find suitable employment.

A court of referees allowed his appeal, finding that the claimant was indifferent about receiving mail, and that "one cannot fail when one does not know the facts".

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The question to decide is whether the claimant 'has without good cause failed to carry out a written direction given to him by an officer of the Commission with a view to assisting him to find suitable employment (being a direction which was reasonable having regard both to his circumstances and to the usual means of obtaining employment)'. (Section 40(1)(c) of the Act.)

"The facts are not in dispute. A notice to report to the local office on October 27, 1947, for an interview in connection with employment was sent to the claimant, by mail, on October 25, 1947. As there is no postal delivery to the claimant's home, the notice was held at the post office which is situated  $1\frac{1}{2}$  miles from his residence. When he called at the local office on October 30, 1947, he was informed that this communication had been addressed to him and then, on that day, [he] obtained the letter in question from the post office.

"The claimant was or should have been aware that being unemployed and in receipt of benefit, he was likely to receive a call for work from the local office. It is reasonable to expect that he would have taken the necessary steps so that any communication sent to him by the local office be brought to his knowledge without delay.

"However, in view of the extenuating circumstances of the case, which are mentioned by the court of referees in their decision, the period of disqualification imposed by the insurance officer is reduced to one week to be effective as from the date that this decision is communicated to the claimant."

### **Case No. CUB-356. (29 April, 1948)**

**Held:** That an arsenal employee who had matches in his pocket while he was in the arsenal Danger Area, was guilty of gross negligence which amounted to misconduct.

The material facts of the case are as follows:

The claimant was employed as a maintenance helper in an arsenal for about three months and made claim for benefit immediately after separation, reporting that he had lost his employment due to lack of work. The employer stated that the claimant was found in possession of matches in the Danger Area of the plant, and that all employees were warned, when hired, that this was forbidden by law. This statement was later confirmed by the claimant. The insurance officer disqualified him for a period of six weeks on the ground that he had lost his employment by reason of his own misconduct. The claimant submitted to the court of referees that the match was in the pocket of an old jacket which had not been used for a very long time, and the court removed the disqualification in a majority decision which read, in part, as follows:

"To his positive evidence, we have proofs not contradicted, that he did not on purpose and voluntarily commit an act, namely have a match in the danger zone, finally he did not do anything voluntarily to become unemployed. Under the circumstances it is not within the scope of the U.I. Act to punish this claimant for the act mentioned in the file.

"He has lost his employment and become unemployed following an unfortunate circumstance but his fault could not constitute industrial misconduct. . . ."

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The facts of the case are not in dispute. The claimant, who was employed at the ..... Arsenals Ltd., was found to be in possession of matches and tobacco in his pockets while working in the Danger Area. Carrying matches or any lighting equipment in the Danger Area of the Arsenals is a serious breach of the company's regulations. One can well understand that strict observance of these regulations made for the protection of human lives as well as property is of the utmost importance. The claimant well aware of these regulations and of their utmost importance should, under the circumstances, have taken the elementary precaution of checking the contents of his pockets.

"On the facts before me, I must conclude that he was grossly negligent and therefore lost his employment by reason of his own misconduct within the meaning of section 41(1) of the Act.

"The decision of the court of referees is reversed and the appeal of the insurance officer is allowed. The claimant is disqualified from receipt of benefit for a period of six weeks, as from the date that this decision is communicated to him."

## Case No. CUB-357. (29 April, 1948)

**Held:** That employment as a junior stenographer-typist at a salary of \$15 per week was unsuitable for a claimant who was a bilingual stenographer-typist with six years of experience and whose maximum salary had been \$110 per month.

The material facts of the case are as follows:

The claimant, unmarried, aged 28 years, worked as an accountant and office clerk, at a salary of \$25 per week, from August 18, 1947, to October 31, 1947, when she left this employment voluntarily as her employer moved his manufacturing plant to another city. Her renewal claim for benefit, made on November 18, 1947, was allowed.

On November 21 the local office notified her of permanent employment as a stenographer-typist with a radio broadcasting station, at a salary of \$15 per week, which was reported to be the prevailing rate, with a work week of  $35\frac{1}{2}$  hours. She refused to apply for this employment, stating that the salary did not correspond with the qualifications required of an experienced bilingual steno-typist. The insurance officer disqualified her, for this refusal, from receipt of benefit for a period of six weeks. The claimant appealed to a court of referees, stating that the position was for a beginner (which was confirmed by the prospective employer), and she had worked as typist, stenographer, and bookkeeper since 1941. A court of referees, by a majority upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

## DECISION

The appeal was allowed.

"The evidence indicates that the claimant is a well qualified bilingual stenographer, with experience in accounting and general office work. According to her employment record, she worked two years with ..... Ltd. at a salary of \$110 a month, one year with the ..... Co. Ltd. at \$22 a week and two and a half months with ..... Co. of Canada Ltd., at \$25 a week.

"Under the circumstances, I find that the employment notified to the claimant was not suitable employment within the meaning of the Act.

"The decision of the court of referees is therefore reversed and the appeal of the claimant is allowed."

### **Case No. CUB-359. (30 April, 1948)**

**Held:** That an insured person who was occupied in endeavouring to secure orders for a business which was in the process of being organized was not unemployed. It was immaterial whether or not he received any remuneration or realized any profit.

The material facts of the case are as follows:

The claimant, whose last employment had been as a tourist guide during the summer season, made claim for benefit on October 27, 1947, which was allowed. On December 1, 1947 he informed the local office that he was endeavouring to obtain orders on a commission basis for a company which was in process of being organized and, at the time, was not drawing any remuneration. He was disqualified as from December 1, 1947 on the ground that he was not unemployed, the disqualification to last until he proved that he was unemployed, and he appealed to a court of referees. The company with which he was connected advised the local office that he had been obtaining orders for them since December 1, for which he would receive a commission when the contracts were finished. The court of referees upheld the decision of the insurance officer but changed the commencement date of disqualification to January 14, 1948 because it considered that the company had no legal existence until its charter of incorporation was granted on the latter date.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The question to decide is whether the claimant proved that he was unemployed within the meaning of section 27(1)(a) of the Act, during the period from December 1st, 1947 to January 13th, 1948.

"The evidence as to the exact work performed by the claimant during the above-mentioned period, which immediately preceded the incorporation of the company, is somewhat of a contradictory nature. It is clearly established, however, that the claimant is a party to this business venture and that from December 1, 1947 to January 13, 1948, he was engaged in doing preliminary work for the benefit of the company which

was later to be incorporated. Under the circumstances, it is immaterial whether or not the claimant, during this period, received any remuneration or realized any profit.

"On the facts before me and in keeping with principles already established in previous decisions, I find that the claimant has not proved that he was unemployed within the meaning of the Act from December 1, 1947 to January 13, 1948, the period during which he was engaged in doing preliminary work for the M..... Company.

"The decision of the court of referees is, therefore, reversed and the appeal of the insurance officer is allowed."

### **Case No. CUB-360. (30 April, 1948)**

*Held:* That employment as a grocery sales clerk was suitable for an office appliance operator who had been unemployed for nearly nine months. The claimant's contention that the salary was not at the prevailing rate of pay (\$20) was not sustained, as the salary offered was from \$15 to \$30 per week and he had not interviewed the prospective employer.

The material facts of the case are as follows:

The claimant, 37 years of age and unmarried, was employed by the Dominion Government as an office appliance operator from March, 1941 to March 31, 1947, when he was separated from his employment because of work shortage. His salary was \$136 per month. His claim for benefit, made on April 1, 1947 was allowed.

On December 23, 1947, the local office notified him of employment as a sales clerk in a grocery store at a salary of \$15 to \$30 per week, the prevailing salary in the district for that class of work being reported as \$20 per week. The claimant refused to apply for this employment, stating that he did not like the work and that he did not speak very much English. The local office reported that he had a fairly good working knowledge of the grocery business, in view of the fact that he had worked with his father since childhood on a part-time basis in that type of work, and moreover, that his English was sufficient to warrant his applying for the position. The insurance officer disqualified him for a period of six weeks.

The claimant appealed to a court of referees, giving lack of experience, stuttering, and lack of knowledge of the English language as reasons for refusing to apply. He appeared before the court, and the period of disqualification was reduced to one month.

With the permission of the chairman, the claimant appealed to the Umpire, saying that the difference in salary and in working hours made the employment unsuitable.

### **DECISION**

The appeal was dismissed.

"In his submission to me, the claimant states that he had good cause for refusing to apply for the work notified to him because it was employment of a kind other than that in his usual occupation and at a lower rate of wages.

"Subsection 3 of Section 40 reads as follows:

"'After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"Considering that the claimant has been unemployed and in receipt of benefit for approximately eight months, I find that employment of a kind other than that in his usual occupation and at a rate of wages not lower and on conditions not less favourable than those recognized by good employers is, in his case, suitable employment.

"The claimant contends that the position in question was not at the prevailing rate of pay. According to the submissions, the salary offered was \$15 to \$30 a week and the prevailing weekly rate of pay in the district for that kind of work is \$20.

"As the claimant failed to communicate with the prospective employer, he cannot claim relief from the disqualification imposed under Section 40 of the Act on the ground that the employment was not at the prevailing rate of pay in the district.

"Under the circumstances, the unanimous decision of the court of referees is upheld and the appeal of the claimant is dismissed."

#### **Case No. CUB-361. (30 April, 1948)**

**Held:** That a claimant who restricted her sphere of employment to clerical work, after being unemployed for six months, was not available for employment, there being available in her district no work of that kind.

The material facts of the case are as follows:

The claimant worked as a clerk for two and one-half years, terminating her employment on May 31, 1947, when she was married. She made claim for benefit on July 17, 1947, which was allowed, and received benefit (except for a six weeks' period of disqualification for refusal to apply for employment which was considered suitable), until November 27, 1947. On that date she refused to apply for permanent employment as a sales clerk in a dry goods store at a salary of \$12.50 a week, which was the prevailing rate of pay in the district. She produced a medical certificate which stated that her health would not permit her to work as a sales clerk. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment, and also on the ground that she was not available for work, the latter disqualification to last until she proved that she was available.

The claimant submitted another medical certificate to the court of referees, to the effect that she was under medical care for at least six months and was not capable of working long hours in a store, nor where

the position required too much walking, but was capable of light work, such as office work. The court unanimously removed the first disqualification but confirmed the second, their decision reading, in part, as follows:

“In her declaration given in Exhibit 5, the claimant admits that in her locality there is no employment available of the kind she would like . . . It is shown from all the evidence on file that the claimant is not willing to accept any other work than that of office clerk. . . .”

The chairman granted the claimant leave to appeal to the Umpire in order that an interpretation of the principle of non-availability might be obtained, and the claimant, in her submission, said that she had not limited her sphere of possible employment to office work but was prepared to accept any work, except that of sales clerk, which would have the same hours as office work and would not be injurious to her health.

## DECISION

The appeal was dismissed.

“This is a factual case, there is no point of law involved. The court of referees, which carefully considered all the circumstances of the case, came to the unanimous conclusion that the claimant was not available for work.

“On the facts before me, I do not see any valid reason to differ from this finding of the court of referees.

“The appeal is dismissed.”

## Case No. CUB-362. (26 May, 1948)

*Held:* That the claimant, an industrial worker who, during a period of involuntary unemployment, lived on his farm which was operated by his wife and two children, and who assisted in performing the usual chores but held himself available for industrial employment, was not self-employed.

The material facts of the case are as follows:

The claimant, having been steadily employed for five years as a milling machine operator, lost his employment on July 30, 1947, due to shortage of work, and had been on benefit for approximately six weeks when it was found that he was assisting on his farm consisting of 140 acres. He had 23 head of cattle, some pigs and chickens. He had purchased the farm in 1943 and had established his permanent residence there, but he continued to live in town, 29 miles away, when engaged in industrial employment, his wife operating the farm on a share basis with the help of their sons, aged 13 and 11 years. He stated that his wife's income from the farm was less than \$1.00 a day. When he became unemployed he returned to the farm and assisted in performing the chores and making general repairs and was engaged in putting a roof on the barn, with the assistance of a neighbour whom he had hired, when this information came to light.

The insurance officer disqualified him as from September 25, 1947, on the ground that he was not unemployed but was in business for

himself, the disqualification to last until he proved that he was unemployed, and the court of referees unanimously upheld this decision.

The union of which the claimant was a member appealed to the Umpire and an oral hearing was held.

#### DECISION

The appeal was allowed.

"It was agreed at the hearing that the claimant is an industrial worker and not a farmer. He went to reside on his farm during the period of his involuntary unemployment and immediately upon securing employment, he returned to the city. The farm, which was purchased in 1943, is operated by his wife and two children.

"Under the circumstances, he cannot be considered as self-employed for the purpose of the Unemployment Insurance Act. Although he might have assisted his wife and children in performing the usual chores on the farm, there is no indication that, if he derived any remuneration therefrom, it was in excess of \$1.50 a day within the meaning of Section 29(1) (b) (ii) of the Act."

#### Case No. CUB-363. (26 May, 1948)

**Held:** That availability for work is not the deciding factor in the case of a claimant whose main and primary occupation is that of a farmer and who becomes temporarily available for work because he has finished his farm work. The claimant, although he satisfies the requirements of Section 27(1)(b), has not proved *ipso facto* that he is unemployed within the meaning of Section 27(1)(a). Unless he gives up farming as his main occupation, he cannot qualify for the receipt of benefit.

The material facts of the case are as follows:

The claimant owned a half section of land which he farmed during the summer months. He had no livestock and did not intend to live on the farm during the then approaching winter. On making claim for benefit he gave his occupation as "farmer". His pattern of industrial employment disclosed that in 1944-45 he had four months' employment with a packing company and in 1945-46 ten months' employment with the same company. During the last two years he worked in the off-season for farming approximately eight months out of a possible ten months.

He was disqualified as from March 31, 1947, on the ground that he was not unemployed but was in business for himself, having refused to apply for employment as a farm labourer because he was working on his own farm, the disqualification to last until he proved that he was unemployed.

He made a renewal claim on October 7, 1947, stating that he was then available for work, and the insurance officer held the indefinite disqualification imposed as of March 31, 1947 to be still in effect. The court of referees unanimously upheld this decision but the chairman granted leave to appeal.

#### DECISION

The appeal was dismissed.

"The facts indicate that the claimant is mainly and primarily a farmer working on his own account on his land. In his submission dated October 25, 1947, the claimant stated: 'My main occupation is [that of] a farmer and I do intend to return to the farm in the spring.'

"The claimant contends that because then 'he had finished his farm work' and therefore had become temporarily available for work, he should be entitled to receive unemployment benefit. Availability for work is not the deciding factor in this case and the claimant because he satisfies the requirements of paragraph (b) of subsection (1) of section 27, has not proved 'ipso facto' that he is unemployed within the meaning of paragraph (a) of subsection (1) of section 27.

"Even though the claimant may suspend his farming operations during the winter months or off-season, he does not cease to be a farmer. He retains all his interest in the land during the off-season and the soil continues its inherent functions as a result of his toil. Unless he gives up his farming operations as his main occupation, he cannot qualify for the receipt of benefit and will remain outside of the unemployment insurance plan for the duration of his self-employment. As regards insured persons who have entered into business on their own account and thereby become self-employed, it is not the intent and purpose of the Act to subsidize these persons for the period during which they do not draw profit or remuneration from their enterprise.

"The claimant might be employed in insurable employment during the off-season in what could be termed subsidiary or auxiliary employment and thus, contributing to the unemployment insurance fund. However, in such case, he is paying a premium to be insured against the risk of future unemployment whenever he cares to be self-employed.

"Under the provisions of the Act and the existing regulations, I have no other alternative, therefore, than to find that the claimant has failed to prove that he is unemployed within the meaning of paragraph (a) of subsection (1) of Section 27 of the Act.

"This problem of self-employment has been given a great deal of consideration in the past and was lately the subject of an official hearing in the case of ..... (CUB-362). In view of the different climatic and economic conditions in our country, the representatives of the labour unions and of the Unemployment Insurance Commission, who were present at the hearing, submitted to the Umpire that too broad and uniform an application of the principles laid down in decisions pertaining to matters of self-employment might tend to create some hardship or anomalies.

"In this connection, I wish to point out that under the Act the Commission has full authority, if it so desires, to introduce by way of remedial regulations the changes necessary to remove such hardship or anomalies as may exist in cases of self-employment."

#### **Case No. CUB-364. (27 May, 1948)**

**Held:** That the claimant, who had purchased a peach farm which he operated during the summer and early autumn and who applied for benefit in November at the beginning of the seasonal slack period, was self-employed as his main occupation was that of a fruit farmer. He cannot, although he is temporarily available for work, qualify for the receipt of benefit. CUB-363 followed.

The material facts of the case are as follows:

The claimant was a bookkeeper who had been employed by the Dominion Government for approximately five years and, on losing his employment, purchased a fruit farm on July 22, 1947, on which he was engaged until November 15, 1947. He made claim for benefit on November 21, 1947, stating that it was then the slack period, that all fall work had been done on the farm, and that he would be available for work until the following spring. He was disqualified on the ground that he was not unemployed but was in business for himself, the disqualification to last until he proved that he was unemployed.

He furnished the court of referees with particulars of his income and expenditures in connection with the operation of the farm, on which he appeared to be losing money due to a crop failure. The court allowed the claim, the chairman dissenting.

The insurance officer appealed to the Umpire and the claimant submitted a statement to the effect that he had, about the middle of January, accepted full-time employment of short duration and during that time had made contributions to the Unemployment Insurance Fund.

## DECISION

The appeal was allowed.

"The facts indicate that the claimant's main occupation is that of a fruit farmer. Being primarily a fruit farmer, he must be considered under the Unemployment Insurance Act as self-employed and cannot, because he is temporarily available for work, qualify for the receipt of benefit. In such cases, the matter of profit or loss resulting from a claimant's enterprise is, as stated in previous decisions, immaterial to the issue.

"This matter of self-employment has been fully dealt with in a similar case (CUB-363)."

## Case No. CUB-365. (27 May, 1948)

**Held:** That the claimant, a registrant for employment as a labourer and farmer, who worked his own farm consisting of 65 acres and applied for unemployment benefit at the end of the farming season, and who contended that because of the nature of the farming operations in his locality he had two separate and distinct occupations, was self-employed as his main occupation was that of a farmer. He cannot, although he is temporarily available for work, qualify for the receipt of benefit. CUB-363 followed.

The material facts of the case are as follows:

The claimant, registered for work as a labourer and farmer, had been employed in a factory from October 8, 1946 to April 10, 1947 and from that date until the farming season ended on November 1, 1947, was engaged in operating his own farm (65 acres) of which 41 acres were under cultivation, the remainder being hay and pasture. He applied to his former employer for work and to another plant also, but they were not able to hire him. He made claim for benefit on December 12, 1947, and was disqualified on the ground that he was not unemployed but

was in business for himself, the disqualification to last until he proved that he was unemployed. The court of referees upheld the decision of the insurance officer.

In his appeal to the Umpire, the claimant stated that he had two separate and distinct occupations, namely, farming and factory labour, that he could do his chores in a few minutes morning and evening, and that the performance of these chores should be considered as subsidiary employment, since his earnings were less than \$1.50 a day.

## DECISION

The appeal was dismissed.

"The facts indicate that the claimant's main occupation is that of a farmer. Being primarily a farmer, he must be considered under the Unemployment Insurance Act as self-employed and cannot, because he is temporarily available for work, qualify for the receipt of benefit.

"This matter of self-employment has been fully dealt with in a similar case (CUB-363)."

## Case No. CUB-366. (28 May, 1948)

*Held:* That upon the facts, it was considered that the claimant's main occupation was that of a farmer and consequently that he was self-employed and could not, although he was temporarily available for work, qualify for the receipt of benefit. CUB-363 followed.

The material facts of the case are as follows:

The claimant, registered for work as a farm hand, had worked for 21 years in an automobile factory and terminated this employment in April 1947 due to ill health. He owned an acre of land which he had been farming for 21 years and also had some cattle, a number of pigs and chickens, and a team of horses. His wife performed the work on the land and looked after the stock. After his separation, he worked this land, on which he cultivated fruit trees and grapevines, and grew corn, oats and hay on another 29 acres which he rented. In his spare time, he accepted contracts for digging and spent possibly two months out of nine in this type of work.

He made claim for benefit on January 30, 1948 and was disqualified as from that date, on the ground that he was not unemployed, the disqualification to last until he proved that he was unemployed. The court of referees, before which he appeared, upheld this decision.

The chairman granted the claimant leave to appeal to the Umpire.

## DECISION

The appeal was dismissed.

"The facts indicate that the claimant's main occupation is that of a farmer. Being primarily a farmer, he must be considered under the Unemployment Insurance Act as self-employed and cannot, because he is temporarily available for work, qualify for the receipt of benefit.

"This matter of self-employment has been fully dealt with in a similar case (CUB-363)."

**Case No. CUB-367. (27 May, 1948)**

**Held:** That if a claimant's main occupation is that of a farmer he must, being primarily a farmer, be considered under the Unemployment Insurance Act as self-employed, and cannot, although he is temporarily available for work, qualify for the receipt of benefit. CUB-363 followed.

The material facts of the case are as follows:

The claimant, registered for work as a meat cutter, had a history of insurable employment for the years 1943, 1944 and 1945, and made claim for benefit on December 3, 1947. He obtained an extension of the two-year period for the period March 18, 1945 to September 28, 1947, on the ground that he had been engaged in business on his own account as a farmer during that time. He was hailed out on July 8, 1947, had not resided on his farm since that date, and had been in the labour market, having worked in a packing plant from October 24, 1947 to November 29, 1947, on which date he was laid off. The insurance officer disqualified the claimant on the ground that he was not unemployed, being in business for himself as a farmer, the disqualification to last until he proved that he was unemployed.

The court of referees unanimously upheld this decision but leave to appeal to the Umpire was granted.

**DECISIÓN**

The appeal was dismissed.

"The facts indicate that the claimant's main occupation is that of a farmer. Being primarily a farmer, he must be considered under the Unemployment Insurance Act as self-employed and cannot, because he is temporarily available for work, qualify for the receipt of benefit.

"This matter of self-employment has been fully dealt with in a similar case (CUB-363)."

**Case No. CUB-368. (26 May, 1948)**

**Held:** That the claimant, a smallholder under the Veterans' Land Act who is expected to couple his income from his farm with income from some other occupation, and who was seeking employment, should not be considered as a farmer and therefore self-employed.

The material facts of the case are as follows:

The claimant, employed as a millhand from October 1946 to April 1947, left his employment in order to look after a small holding under the Veterans' Land Act. His farming operations consisted of tending an orchard, milking one cow, feeding four pigs, making hay, looking after his garden and getting fuel from his wood lot. The claimant, as a smallholder, was established in a part-time enterprise, the understanding being that he was to obtain a portion of his income from some occupation other than the operation of the farm. He was granted \$600 for stock and equipment, and his property covered 61 acres, 40 of which were unsuitable for cultivation. The insurance officer disqualified the claimant as from August 11, 1947 on the ground that he was not unemployed but was engaged in business on his own account, the disqualification to last until he proved that he was unemployed.

The court of referees unanimously upheld this decision but the claimant was granted leave to appeal to the Umpire and he stated in his submission that he was again working in insurable employment.

## DECISION

The appeal was allowed.

"According to the evidence before me, the claimant in a small-holder under the Veterans' Land Act. As such, he is expected to couple his income from his farm with that from some other occupation.

"Under these conditions, I am of the opinion that he should not be considered as a farmer and thereby self-employed for the purpose of the Unemployment Insurance Act.

"I consider that the claimant has proved, within the meaning of Section 27(1)(a), that he was unemployed on August 11, 1947 and therefore, should qualify for the receipt of benefit provided he meets all the other requirements of the Act."

## Case No. CUB-369. (28 May, 1948)

*Held:* That the claimant who was and had been, for some time prior to his involuntary separation from employment as a compressor man in a colliery, the owner of a bus company but took no active part in the operation of the company, and who resumed his position in the colliery after a temporary lay-off had proved that he was unemployed during the lay-off. CUB-264 differs in that the claimant was not only the owner of a business but was also actively engaged in the operation thereof.

The material facts of the case are as follows:

The claimant, employed for 26 years as a compressor man at a colliery, was laid off due to a mechanical breakdown at the mine. He held a bus franchise but stated that he had not taken any part in the business, having been wholly employed at the colliery until his discharge. The regular office routine was carried on by his wife, and repairs and maintenance and bus schedules were carried out by the three drivers. He looked upon the business purely as an investment and did not receive any regular salary or remuneration, the profits being put back into the business, as it was his intention some day to discontinue his employment in the colliery and devote his time to the operation of the bus route. The insurance officer disqualified him on the ground that he was not unemployed, as he was in fact operating a bus service, the disqualification to last until he proved that he was unemployed.

The court of referees confirmed the disqualification, basing their decision on CUB-264, but the claimant was granted leave to appeal to the Umpire.

## DECISION

The appeal was allowed.

"The facts indicate that the claimant is and has been, for some time prior to his involuntary separation from the ..... Collieries, the owner of a bus company. They show, however, that the claimant took no active part in the operation of this company as, for a period

of 26 years, he has been an employee of the ..... Collieries where he resumed his position as a compressor man after his temporary lay-off. The claimant's statement to that effect is fully corroborated by the Manager of the National Employment Office at ..... in his letter dated February 20, 1948. Neither that statement nor this letter has been disproved in any way.

"Under the circumstances, I consider that the claimant has proved that he was unemployed within the meaning of the Act on December 5, 1947, when he filed his claim for benefit.

"The circumstances of case CUB-264 mentioned by the court of referees in their decision are different to that of the present one. In CUB-264, the claimant was not only the owner of a business but was also actively engaged in the operation thereof."

### **Case No. CUB-370. (28 May, 1948)**

*Held:* That absence in the United States does not constitute good cause within the meaning of Section 13 of The Unemployment Insurance Benefit Regulations, 1947, for delay in making claim for benefit.

The material facts of the case are as follows:

The claimant, aged 66 years, was employed as a clean-up man for four years and was laid off because he was overage. His claim for benefit was allowed as from August 8, 1946 and he remained on benefit until January 1947, when he went to the United States to look after his sick brother. He returned to Canada in July 1947 and made claim for benefit on September 13, 1947, but no benefit year was established, because he did not have 60 daily contributions since the establishment of his previous benefit year. He then requested antedating of his claim to March 6, 1947, alleging that on that date he visited an employment office in the United States and was advised that he could not draw benefit there under the Canadian Act.

The insurance officer did not approve the application for antedating and this decision was confirmed by the court of referees in a unanimous decision which reads as follows:

"Appellant's union representative submitted that appellant lost the remainder of his benefit days through a technicality. However, we cannot agree; appellant moved away from V....., with no idea or information that he could renew it elsewhere.

"Ignorance of the law may not be claimed as reason for escaping its provisions. Aside from this, [the claimant] was clearly not entitled to unemployment insurance benefits during his stay in California, as he did not report weekly as required.

"There is no provision of the Unemployment Insurance Act under which he could demand ante-dating, and the appeal must be disallowed."

The claimant's union appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The claimant's reason for having delayed in filing his claim for benefit is that from March 6th, 1947 to July 16th, 1947, he was in

the United States where he registered for employment and endeavoured to file a claim for benefit. Although he returned to his home in V....., on July 16th, 1947, he did not file a claim for benefit until September 13th, 1947.

"On the facts before me, I consider that the court of referees has rightly refused the claimant's request for antedating. The reasons given in their unanimous decision seem to be fully justified. Moreover, Section 13 of the Unemployment Insurance Benefit Regulations, which reads as follows, is applicable to this case:

"Where a claimant considers that he has good cause for delay in making a claim for benefit and applies to have his claim made effective from a date earlier than the date of such application, an insurance officer may refuse such application, or approve it if the claimant proves

- (a) that on such date he had in all respects fulfilled the conditions for entitlement to benefit and was in a position to furnish proof thereof; and
- (b) that throughout the whole period between such earlier date and the date he made his claim he had good cause for delay in making such claim and furnishing such proof."

"The claimant has not proved that, throughout the whole period between March 6th, 1947 and September 13th, 1947, the date he made his claim, he had good cause for the delay in making such claim and furnishing such proof within the meaning of Benefit Regulation 13 quoted above."

#### **Case No. CUB-371. (28 May, 1948)**

**Held:** That a married woman, claiming benefit under the Unemployment Insurance Act must prove, as any other claimant, that she is available for work. Availability for work implies being able, willing and ready to accept immediately suitable employment when offered.

The material facts of the case are as follows:

The claimant was employed as a cashier for ten months prior to her marriage, at which time she voluntarily left and moved to a small mining village located approximately 180 miles from the nearest industrial centre. Her postal claim for benefit was allowed but she was disqualified three months later on the ground that she was not available for work, the insurance officer's decision being based on the fact that she had expressed herself as being unwilling to work anywhere except in the village where her home was located. The decision was upheld by the court of referees.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The claimant does not want to accept work outside of R..... in view of her domestic circumstances. R..... is a small and remote mining village with a population of approximately 600, where, according to the claimant's statement, employment is difficult for her to obtain. In fact, since moving to R..... late last summer, she has been unable to secure work.

"The claimant's refusal to leave R..... on account of her domestic circumstances, is quite understandable but it must be borne in mind that when a married woman claims benefit under the Unemployment Insurance Act, she must prove, as any other claimant, that she is available for work. Availability for work, which is one of the main requirements of the Unemployment Insurance Act for the receipt of benefit, implies being able, willing and ready to accept immediately suitable employment when offered.

"I consider that in this case the claimant is not available for work within the meaning of the Act.

"The court of referees has rendered their decision according to the facts placed before them and according to previous decisions given in similar cases by the Umpire."

### **Case No. CUB-372. (22 June, 1948)**

**Held:** That the claimant was entitled to benefit at the dependency rate under Section 31(2) of the Act while his twenty-year-old son was a resident student at an agricultural college. The period of the son's absence from home is one which comes within the meaning of the temporary absence suggested by Section 2(3)(a) of the Unemployment Insurance Benefit Regulations, 1947.

The material facts of the case are as follows:

This is the case of a widower whose claim for benefit was allowed at the single rate and who thereupon made application for the dependency rate, claiming as his dependent a twenty-year-old son who, allegedly, was entirely dependent upon him for support while he was a resident student at an agricultural college. The dependency rate was not approved by the insurance officer, on the ground that the claimant's son was not supported by him in a self-contained domestic establishment in accordance with Section 31(2)(d) of the Act and Benefit Regulation 2(3)(a). The court of referees allowed the claimant's appeal.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The material part of Section 31 under which the dependency rate is claimed, is as follows:

"Where the employed person is a person with a dependent that is to say . . .

(d) a person who maintains a self-contained domestic establishment and supports therein a wholly dependent person connected by blood relationship, marriage or adoption;

the daily rate of benefit shall be forty times . . ."

and should be read in conjunction with Section 2(3)(a) of the Benefit Regulations where a 'self-contained domestic establishment' is defined:

"‘a “self-contained domestic establishment” shall mean a dwelling house, apartment, or other similar place of residence, comprising at least two rooms, in which residence, among other things, the insured person and the dependent for whom he claims, as a general rule sleep and have their meals prepared and served.’"

"The reading of these two sections brings us to the logical conclusion that the payment of the dependency rate is not excluded by reason of a temporary absence of the dependent.

"In the present instance, the son for whom benefit at the dependency rate is claimed, is 20 years of age, entirely supported by the claimant and a boarder at the agricultural college at ..... In the absence of evidence to the contrary, it can be assumed that during the vacation period, the claimant's son lives in his father's residence which is, in fact, his home and domicile. The question resolves itself as to whether his period of absence from home is one which can be contemplated as a temporary absence within the meaning suggested by Section 2(3) (a) of the Benefit Regulations.

"Taking into consideration the reason for the absence, the fact that we can assume that the son's intention is to return home at the close of the college term and that when he is not at college, he would, as a general rule, eat and sleep at home and be supported therein, I am of the opinion that this absence is one which comes within the meaning of the temporary absence suggested by Section 2(3) (a) of the Benefit Regulations and that, therefore, benefit at the dependency rate should be granted in this case.

"This construction of Section 31(2) (d) of the Act and of Section 2(3) (a) of the Benefit Regulations seems well supported by the interpretation given to Section 5(1) (c) (iii) of the Income Tax Act, the language of which apparently served as the basis for the drafting of Section 31(2) (d) of the Unemployment Insurance Act.

"Section 5(1) (c) (iii) of the Income Tax Act reads as follows:

"'An unmarried person or a married person separated from his spouse who maintained a self-contained domestic establishment and actually supported therein a person wholly dependent upon him and connected with him by blood relationship, marriage or adoption.'

and according to a statement obtained from the Legal Branch, Taxation Division, Department of National Revenue, Ottawa, the meaning attached to the word 'therein' in the said section is:

"'that of residence without the constant physical presence of the dependent. Children at school, either as boarders or otherwise, and who are entirely dependent upon their father or mother for example, are included in the category of persons on account of whom the exemption is granted. It is sufficient that these children would have no personal income and that their usual residence would be that of their parents in order that the latter may avail themselves of the aforesaid exemption.'"

#### **Case No. CUB-373. (22 June, 1948)**

**Held:** That the claimant, a railroad switchman, whose name was last on the seniority spare board for switchmen and who was called for work from two to four times a month, was not separated from his employment and was not unemployed, therefore, on the date on which he filed his claim for benefit.

The material facts of the case are as follows:

The claimant was employed by a railroad company as a switchman, at an hourly rate of pay, for a period of approximately three months and on his making claim for benefit it was found that he had not

separated from his employment but was on the spare board, which means that he had agreed to hold himself available for employment on the railroad. In the city where the claimant was employed the railroad had but one spare board which was of the seniority type. There is a difference between a rotary board and a seniority board, both senior and junior men on the rotary board sharing the work in rotation, while on the seniority board the work is given to the senior men first. As there is no rotary board in effect in that district, the senior men accept as much work as they wish and the junior men are called only when there are no senior men available. The claimant's name being the last on the list, he was, according to his statement at the time of making claim, working only two to four days a month. He did, however, retain his name on the seniority board, as he did not wish to sever his connection with the company, but was willing to "book off" for the required time if temporary or casual work could be found for him.

The claimant was disqualified by the insurance officer on the ground that he was not unemployed, the disqualification to last until he proved that he was unemployed. This decision was unanimously upheld by the court of referees, but the chairman granted the claimant leave to appeal to the Umpire.

#### DECISION

The appeal was dismissed.

"According to the evidence before me, it appears that in W..... and in some 'other points' of the country, there exists an arrangement between Unemployment Insurance local offices, the union and railway companies whereby spare boards for railways employees are divided in two categories: active spare boards and inactive spare boards. Consequently, for the purpose of unemployment insurance benefit, insured persons who are on active spare boards are considered employed and those on inactive spare boards, unemployed.

"In [the claimant's place of employment] there is no such arrangement at present and the claimant is on call and at the disposal of his employer any day of the week. He is not separated from his employment and cannot therefore claim benefit under the Act.

"The court of referees has rightly pointed out that this case has to be decided 'as the facts now are in [the claimant's place of employment]'; it seems desirable, however, that all interested parties should adopt a uniform and definite procedure when dealing with railway employees.

"Under the circumstances, I see no valid reason to disturb the unanimous decision of the court of referees."

#### Case No. CUB-374. (22 June, 1948)

**Held:** That the claimant, a railroad switchman whose name appeared last on the spare board for switchmen and who had worked approximately seven half days during a five-week period, although prior to that time he had been in full employment, was not unemployed. CUB-373 followed.

The material facts of the case are as follows:

The claimant was employed by an inter-urban electric railroad company as a brakeman for approximately six months and differs from

the ordinary running trade railroad employee in that he was paid by the hour and not by the mile. When he made claim for benefit, it was found that he was not laid off but his name was last on the spare board list, and that, during the period February 19 to March 24, 1948, he had worked seven days, most of these being half days. The insurance officer disqualified the claimant on the ground that he was not unemployed, the disqualification to last until he proved that he was unemployed.

The court of referees unanimously upheld this decision and the chairman granted the claimant leave to appeal to the Umpire.

## DECISION

The appeal was dismissed.

"In his submission to me under date of April 16, 1948, the claimant states:

"'When I applied for benefit on February 19th I had been advised by the [company] that I would only have the odd day's work for the next month or so. As a matter of fact, from February 19th to March 24th I had only 7 days' employment, most of these days were only half days. I maintain that I was just as much unemployed as the men at ..... Industries who were working three days per week and collecting benefit for the other three. Furthermore, I am given to understand that these men do not even register for employment. I registered for employment at the local office on February 19th and was prepared to accept any suitable employment offered me. I understand that it is purely a technicality on which I am being refused benefit in that the [company] did not separate me from their employ on February 19th. When they realized that this technicality was depriving me of my Unemployment Insurance, they separated me from their employ on March 17th, 1948.'

"I am asked to decide whether the claimant was unemployed on the date he filed his claim for benefit.

"I see no valid reason to disturb the unanimous decision reached by the court of referees as the claimant was not separated from his employment on the date he filed his claim for benefit.

"The reasons for reaching this decision are outlined in a similar case CUB-373."

## Case No. CUB-375. (22 June, 1948)

**Held:** That the claimant, the owner of three-quarters of a section of land, who had a history of insurable employment as a labourer during the off-season covering six months in each of the previous seven winters and who intended to resume farming in the spring, was primarily a farmer. Therefore he must be considered under The Unemployment Insurance Act as self-employed and cannot, although he is temporarily available for work, qualify for the receipt of benefit. CUB-363 followed.

The material facts of the case are as follows:

The claimant was a farmer who owned three-quarters of a section of land and, on making claim for benefit on March 5, 1948, he was shown to have had a history of insurable employment as a labourer during the

off-season for farming, covering six months in each of the previous seven winters (during which periods he did not reside on the farm). He had received benefit intermittently during the past two winters. It was his intention to resume farming in the spring. The insurance officer disqualified him on the ground that he was not unemployed, the disqualification to last until he proved that he was unemployed.

The court of referees unanimously upheld this decision and the chairman granted the claimant leave to appeal to the Umpire.

## DECISION

The appeal was dismissed.

"The facts indicate that the claimant's main occupation is that of a farmer. Being primarily a farmer, he must be considered under the Unemployment Insurance Act as self-employed and cannot, because he is temporarily available for work, qualify for the receipt of benefit.

"This matter of self-employment has been fully dealt with in a similar case (CUB-363)."

## Case No. CUB-376. (23 June, 1948)

**Held:** That the claimant, a relief fireman on a ship who signed on for a three-month period but who could have retained his employment had his conduct been satisfactory, had lost his employment at the end of that period by reason of his own misconduct within the meaning of Section 41 (1) of the Act.

The material facts of the case are as follows:

The claimant had been employed as a fireman on a ship as a relief man and, when making claim for benefit, he alleged that he had signed on for a three-months' trip and had been laid off at the expiration of that period due to shortage of work. The master of the ship stated that he had been dismissed because he had been absent without leave on four occasions, having been logged for the offence each time. The insurance officer disqualified him for a period of six weeks on the ground that he had lost his employment by reason of his own misconduct. Further information from the employer disclosed that he would have been re-signed but for his repeated misconduct.

The court of referees unanimously upheld the decision of the insurance officer.

The union of which the claimant was a member appealed to the Umpire on the ground that the claimant was justified in not accepting re-employment on the ship where he had been working as a relief man, contending that he had been compelled to leave the ship under Rule 26 of the National Ship Rules of the ..... Union, and that he would have been penalized for failure to comply with this rule.

## DECISION

The appeal was dismissed.

"According to the master of the ship, the claimant could have retained his employment had his conduct been satisfactory. This charge of misconduct is not denied either by the claimant or the union.

"The union's representative, however, contended before the court of referees that the claimant had terminated his contract of employment; that, in accordance with their agreement with the company and the National Shipping Rules, he was entitled to make one trip only aboard the [ship] since he had merely substituted for another crew member, and, was compelled at the conclusion of the voyage to report to the 'hiring hall' where normally he would compete with the other seamen for the employment he had just temporarily held.

"The master of the ship, in his letter dated May 26, 1948, stated:

"As far as the Articles of Agreement are concerned there is no signing on as a temporary replacement and their being taken off by the [union]."

This statement seems to be supported by the terms of the Agreement as the only article to be found therein dealing with matters of employment is article 2, which has to do with hiring of new personnel only. That article reads:

"In employing new personnel, the company agrees to give preference to members of the union in good standing. Pursuant to this condition, the company shall call the union hall and notify the union of any vacancies which occur. The union agrees to provide competent, capable, and experienced seamen. It is understood and agreed that the men referred to the company by the union may be rejected for due cause.

"It is further understood that the company will be at liberty to obtain seamen from any other source in the event that the union is unable to provide the required personnel within twelve hours from the time they were requested by the company, or within 2 hours of sailing time, if less than twelve hours' notice has been given."

It does not appear therefore that the company or its agent, the master of the ship, is prevented from keeping in its or his employ any member of the crew who has given satisfactory service and who is willing to be re-engaged.

"The Union has quoted section 26 of the National Shipping Rules in support of its appeal to me. Section 26 is not embodied in the agreement and these shipping rules, which are made by the ..... union for the benefit of its members, cannot supersede the agreement in existence between the company and the union.

"The court of referees unanimously found that the claimant had lost his employment by reason of his own misconduct within the meaning of Section 41(1) of the Act and on the facts before me, I do not see any valid reason to alter their decision."

#### **Case No. CUB-377. (23 June, 1948)**

**Held:** That the claimant, a boatswain, who voluntarily left his ship on the ground that the ship was making a voyage to Africa and that since he had been on the ship for a lengthy period, he wanted a change, had not shown just cause for having voluntarily left his employment within the meaning of Section 41(1) of the Act.

The material facts of the case are as follows:

The claimant, a single man, was last employed as a boatswain. He voluntarily left his employment, giving as his reason that the ship was

making a long voyage to Africa and that he wanted a change, having been on the ship for over a year. On his making claim for benefit three weeks later, the insurance officer disqualified him from receipt of benefit for a period of six weeks, commencing on the day following the date of separation, because he had voluntarily left his employment without just cause. This decision was unanimously upheld by a court of referees.

The union of which the claimant was a member appealed to the Umpire on the ground that it is a seaman's privilege to leave his ship after one or more prolonged voyages and that he is entitled to the necessary period of time for relaxation and personal business ashore.

## DECISION

The appeal was dismissed.

"Did the claimant actually leave his employment voluntarily?

"When the claimant filed his claim for benefit, he definitely stated that he had voluntarily left his employment on board the ship. Furthermore, at the hearing before the court of referees, Mr. ...., the union's representative stated:

"He had the privilege of signing on that ship again, signing new articles, but he did not want to do that. He may have wanted to get employment ashore."

"I fail to see, therefore, how it can be contended that the claimant did not voluntarily leave his employment.

"Has the claimant shown just cause for having voluntarily left his employment within the meaning of Section 41(1) of the Act?

"The claimant gave as his reasons that he had already been on the ship for a lengthy period and that he wanted 'a change'. The union further stated in its submission to me that the claimant 'was entitled to the necessary period of time for relaxation and personal business ashore'.

"As already stated in previous decisions, leaving one's employment in order to take a vacation or to look after personal business affairs cannot be regarded as just cause within the meaning of the Act.

"The claimant might have had personal reasons for having voluntarily left suitable employment; however, as an insured person claiming benefit under the Act, he had to show just cause which he failed to do.

"I agree with the unanimous finding of the court of referees, and the appeal is dismissed."

## Case No. CUB-378. (23 June, 1948)

**Held:** That the claimant, a salesman on a milk delivery route, who voluntarily terminated his employment because, in his opinion, his honesty had been questioned, had shown just cause for having voluntarily left his employment within the meaning of Section 41(1) of the Act, since in view of the feeling which existed between the parties concerned, it would have been a hardship for the claimant to remain in the employ of the dairy.

The material facts of the case are as follows:

The claimant was employed for approximately a year and a half as a salesman on a milk delivery route and voluntarily left when the

manager refused to let him have the key to the dairy building which he alleged he required. There had been considerable friction between the claimant and the manager which culminated in the above incident and an alleged expression of doubt by the manager as to the claimant's honesty. The manager admitted, however, that the claimant was not dishonest but was careless in keeping his record of sales and, in any case, he was not entitled to the key. The insurance officer disqualified the claimant for a period of six weeks on the ground that he had voluntarily left his employment without just cause, and this decision was upheld by a majority decision of the court of referees.

The claimant appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The main factor which prompted the claimant to leave his employment was that, in his opinion his honesty was doubted by the manager of the dairy, although the latter did state that he did not consider the claimant 'dishonest, but careless' in accounting for the milk entrusted to him.

"In view of the feeling which existed between the parties concerned, I consider that it would have been a hardship for the claimant to remain in the employ of the dairy and, consequently, that he has shown just cause for having voluntarily left his employment."

#### **Case No. CUB-379. (28 May, 1948)**

**Held:** That the issuance of notices of the expiration of a bargaining agreement accompanied by proposals for the modification of conditions of employment, the insistence by the union on the acceptance of the modifications, the resistance by the employer against such acceptance, and the concerted action of the employees in ceasing work, are obvious indications that a labour dispute exists. A claimant, who lost his employment by reason of such a stoppage of work, is considered to have lost his employment by reason of a stoppage of work due to a labour dispute within the meaning of Section 39 of the Act. (CUB-190 referred to.)

The material facts of the case are as follows:

The claimant worked as a miner at a coal mine from 1942 to January 12, 1948, on which date he lost his employment as a result of a stoppage of work due to a labour dispute between the union of which he was a member and the operators of the mine. The dispute, which originally arose in connection with the date of termination of the contract existing between the operators and the union, was taken to the courts and the supreme court of the province held that the agreement had been lawfully terminated as of December 3, 1947. Pending an appeal to the Supreme Court of Canada by the employers, and after representation to the Minister of Trade and Industry, a conciliation commissioner was appointed to deal with other matters in dispute, including increased wages. No agreement was reached by the interested parties and he reported to the Minister to this effect on January 12, 1948, the stoppage of work taking place the following day.

The claimant made claim for benefit and was disqualified as from January 13, 1948, on the ground that he had lost his employment by

reason of a stoppage of work due to a labour dispute. The claimant appealed to a court of referees, which unanimously upheld the decision of the insurance officer.

The union appealed to the Umpire.

## DECISION

The appeal was dismissed.

"From the facts and submissions before me, it is established that the claimant, on January 13th, 1948, lost his employment by reason of a stoppage of work at the mine at which he was employed. The question to decide is whether or not that stoppage of work was due to a labour dispute within the meaning of the Unemployment Insurance Act.

"A labour dispute is defined in paragraph (d) of subsection (1) of Section 2 of the Act as follows:

"‘‘labour dispute’’, means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not.’

"The evidence indicates that the union issued notices to the employers to the effect that the agreement had, in their opinion, expired. These notices were accompanied by proposals for an increase in wages and ‘for an adjustment of other matters related to their employment’. The employers, however, according to the union ‘refused to negotiate with [them] in respect of these matters’. Subsequently, a conciliation commissioner was appointed by the provincial government at the request of the union and negotiations were carried on by the parties concerned. The employers again refused to approve of the demands of the union and the employees, by concerted action, ceased work on January 13, 1948.

"These incidents which preceded the stoppage of work, i.e., the issuance of notices accompanied by proposals for the modification of conditions of employment, the insistence by the union on the acceptance of the said modifications, the resistance by the employer against such acceptance, are obvious indications that a labour dispute existed at the mine within the meaning of the Unemployment Insurance Act. As already laid down in decision CU-B. 190:

"‘‘A labour dispute has certain characteristics which are well defined and by which it is ascertainable if a dispute is in existence within the terms of Section 43 (Section 39 as amended 1946) of the Act. A labour dispute is usually preceded by negotiations between the contending parties and there is also an insistence by either party on certain matters affecting the conditions of employment. If the negotiations or the insistence by the parties to the dispute lead to a stoppage of work, then such stoppage would come within the meaning of Section 43 (Section 39 as amended 1946) of the Act.’

"Furthermore, as pointed out by the court of referees, ‘the miners, by their own written representations, through their own representatives,

have made it perfectly clear that there was a labour dispute which brought about the stoppage of work on January 13th, 1948'.

"For the purposes of the Unemployment Insurance Act, the existence of a stoppage of work due to a labour dispute is, in this case, the only material issue.

"The court of referees has rendered an unanimous decision according to fact and law and the claimant was rightly disqualified from the receipt of benefit."

#### **Case No. CUB-380. (28 June, 1948)**

**Held:** That a claimant who upon separation from employment, receives, in addition to the salary due him, a sum to cover leave accumulated but not taken, continues to receive remuneration subsequent to the date of separation for the number of days of such accumulated leave.

The material facts of the case are as follows:

The claimant, an accountant, was employed by a Crown company from September 21, 1944 until he became separated on January 31, 1948, and on that date he received the salary due him and \$77.00 in lieu of eleven days' accumulated statutory leave.

He made claim for benefit on February 2, 1948 and was disqualified from February 2 to February 11, 1948, because he was not deemed to be unemployed during that period. The court of referees allowed the claim on the ground that the claimant did not continue to receive remuneration, and the insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"The facts and submissions before me indicate that the claimant received his wages up to and including January 31st, 1948. In addition thereto, he received a payment of \$77 for eleven days statutory leave.

"Section 29(1)(a) of the Act reads:

"An insured person shall be deemed not to be unemployed

- (a) during any period for which notwithstanding that his employment has terminated, he continues to receive
  - (i) remuneration, or
  - (ii) compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated.'

"In keeping with the interpretation placed upon Section 29(1)(a) of the Act in previous decisions, the payment of this amount of \$77 was in consideration of the eleven days following the date of the termination of his employment; otherwise, the claimant would receive for these eleven days statutory leave, double the amount of his usual wages. Notwithstanding that his employment had terminated on January 31st, 1948, he, therefore, 'continued to receive remuneration' up to February 11, 1948 inclusive."

**Case No. CUB-381. (20 September, 1948)**

**Held:** That a claimant had good cause for refusing to apply for employment of which she had been notified, having established to the satisfaction of a court of referees that such employment was in a situation which she had previously found unsatisfactory and that the same unsatisfactory conditions still prevailed.

The material facts of the case are as follows:

The claimant was employed for 4 hours a day as a button-hole machine operator, at 40 cents an hour, from June 17, 1946 to January 21, 1948, when she lost her employment because of shortage of work. Her claim for benefit was allowed and on April 8 she refused to apply for a situation in the same type of employment for 4 hours a day, at a wage of 45 cents an hour, claiming that she had previously worked for the prospective employer for  $2\frac{1}{2}$  years and did not wish to work there again. The insurance officer disqualified her for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment. When appealing to a court of referees, the claimant stated that she had not got along with the forelady at the plant and that she would not make as much money, as she had worked on piece work in her last employment and had averaged 65 to 70 cents an hour. The court reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

**DECISION**

The appeal was dismissed.

"The question to decide is whether the claimant has without good cause refused to apply for a situation in suitable employment.

"I agree with the insurance officer that, after an interval of two years and five months, such reasons as advanced by the claimant in her written submissions would not, as a rule, establish good cause within the meaning of Section 40(1)(a) of the Act.

"However, in a submission dated July 8th, 1948, the claimant stated:

"I notice they say that I should have made an appearance at the B.... Co. to see if the same conditions still existed there as when I left their employ in October 1945. In the first place Miss M . . . merely suggested that some day I could take a walk down to B . . .'s and see if there was an opening in my line of work. I never was sent a formal notice to apply there. The next time I reported to the office, Miss M.... asked me if I had gone there to apply and I said "no", telling her then my reasons for not doing so. Miss M . . . said she had mentioned me to Mr. R . . . of B . . .'s and he said he knew me and would not place me on the machines but elsewhere if I applied as I had worked there before. That would, of course, be in the inspecting corner where I worked for the  $2\frac{1}{2}$  years and under the same forelady. I happen to know Mr. R . . . personally outside of the factory, having been a guest in his home several times and I do know that the same forelady is still there, in fact there has been only one change or two in the foreman and foreladies since I left there. I also have a girl friend who is still working there and

we talk about our work naturally and I do know how things are. There was no opening on the Button machine, and as for doing inspecting and mending, my eyes are not as good as they were as I have almost lost the sight of my left eye and that work requires good eyesight. The Button machine does not bother me in this way.'

By this statement, it appears that the claimant had ascertained that the conditions which she had objected to when previously employed at B . . .'s still existed when it was suggested to her that she might apply for work with that firm.

"Moreover, I must bear in mind that the court of referees had the opportunity of hearing the claimant. They were satisfied that she was genuinely seeking work and in the light of her testimony and of all the circumstances of the case, they reached the unanimous conclusion that she had good cause in refusing to apply for the situation notified to her.

"Upon the evidence before me, I do not see any valid reason to alter this unanimous decision of the court of referees.

"The appeal is dismissed."

#### **Case No. CUB-382. (20 September, 1948)**

**Held:** That a claimant who voluntarily left his employment because of doubt as to his employer's solvency, which had not yet affected his weekly wage, left his employment without just cause.

The material facts of the case are as follows:

The claimant worked for seven months for a firm which had paid every Saturday morning by cash until recently, when they commenced paying by cheque. A department store had refused to cash his cheque on Saturday, February 28 due, he said, to the poor reputation of the firm. He returned to his employer, who offered him \$10 and the balance of the cheque in cash on Monday. He refused this and cashed the cheque at a hotel where he was known, and separated from his employment on that day. The cheque was returned by the bank, marked "N.S.F.", but later developments showed that the claimant was not aware of this at the time he separated from his employment. The employer's story was that this was the only occasion on which a salary cheque had not been honoured, and that it had been "covered" on the following Monday, although the hotel did not again present the cheque to the bank until April 7, at which time it was requested to do so by the claimant's former employer.

The insurance officer disqualified the claimant for a period of two weeks, on the ground that he had voluntarily left his employment without just cause, and the court of referees unanimously upheld this decision. The court reheard the case on new facts produced by the claimant and, by a majority decision, confirmed the previous disqualification.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The question to decide is whether the claimant has shown just cause for having voluntarily left his employment within the meaning of Section 41(1) of the Act.

"This case is entirely one of fact. The court of referees who went carefully into all the facts and submissions of the case and had the opportunity of hearing the claimant, not only once but twice, found that he had not shown just cause for having voluntarily left his employment.

"On the evidence before me, I consider that the decision of the court of referees was justified. The claimant was too hasty in severing his connection with his employer when he had no other reasonable prospect of work.

"However, there are extenuating circumstances in this case and they were taken into account when the claimant was disqualified for a period of two weeks only.

"The appeal is dismissed."

#### **Case No. CUB-383. (20 September, 1948)**

**Held:** That a claimant who had been employed last at a rate of 74 cents per hour and who withdrew from the employment field for more than a year in order to be married, and who failed to apply for a situation in suitable employment which was in other than her usual occupation but at the prevailing rate of pay in the district for that type of work, had not shown good cause for failure to apply for a situation in suitable employment. **Held** also that the onus of finding employment for a claimant does not lie entirely upon the local office; a claimant must also be co-operative and must make every possible effort to obtain work.

The material facts of the case are as follows:

The claimant left her employment as a mount mill operator at a wage of 74 cents an hour for a 5-day, 44-hour week, in order to be married. Nearly a year later, she made claim for benefit, which was allowed. The local office claimed that it was extremely difficult to place married women in employment and when, a month later, she refused to apply for work as a packer at a salary of \$18 for a 45-hour week, she was disqualified by the insurance officer for a period of six weeks, on the ground that she had without good cause refused to apply for a situation in suitable employment.

The court of referees reversed the decision of the insurance officer, being of the opinion that the local office had not discharged its responsibilities as outlined in case number CUB-46, in the matter of first attempting to place the claimant in employment in her usual occupation at her usual wages and under conditions not less favourable than those observed by agreement between employers and employees or than those recognized by good employers. This statement was based on information allegedly received by one of the members of the court to the effect that this claimant could have been re-employed if she had been referred to her former employer, whereas she stated that the local office had informed her that no married women were being hired in the lamp section of the plant, where she had been employed.

The insurance officer referred the case back to the court of referees and produced evidence that the plant in question not only had not been

hiring married women, but that there had been several small lay-offs of single girls since the claimant left her employment, and that these girls had been re-hired on a seniority basis. The court of referees unanimously confirmed their previous decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The claimant after having voluntarily left her employment as a mount mill operator with the . . . Co. to be married, withdrew from the labour field for a period of approximately one year. On February 2, 1948, she filed a claim for benefit and, a month later, was notified of employment as a packer. According to the submissions, the employment situation which prevailed in H . . . at that time for married women was 'very acute'; in fact it is stated that many single girls who had held semi-skilled positions were out of work.

"Although there seemed to be no prospect for the claimant to obtain employment in her usual occupation, she refused or failed to apply for the position notified to her because in her opinion, 'the hours were too long and the wages too low'. The evidence indicates, however, that the wages offered, although lower than those in her previous employment, were at the prevailing rate of pay in the district for that kind of work; while the daily hours of work were longer, the working week consisted of five days only which is considered normal in the industry.

"Considering all the circumstances, I find that sub-section (3) of section 40 must apply in this case. The said sub-section reads as follows:

"'After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"The claimant has, therefore, without good cause failed to apply for a situation in suitable employment.

"The court of referees has gone exhaustively into the question of whether the local office had first attempted to place the claimant in her usual occupation. They found that the claimant had been misled by the local office and were of the opinion that she should have been referred to the W . . . Co. where 'there was a possibility that she would have been rehired'.

"On this point, I am unable to agree with the court of referees. The evidence shows that the local office was reasonably led to believe that there was no opportunity of employment for the claimant with the W . . . Co. as that firm had not informed the local office of any vacancy. Furthermore, the employment statistics submitted to the court of referees, as well as the statements of the claimant and of the representatives of the company before the court, bear out this conclusion.

"I wish to point out that the onus of finding employment for a claimant does not lie entirely upon the local office; a claimant must also, as indicated in previous decisions, be cooperative and make every possible effort to obtain work. In this case, no such cooperation is apparent.

"The court of referees erred in their decision and the appeal of the insurance officer is allowed. The claimant is disqualified for a period of six weeks as from the date that this decision is communicated to her."

### **Case No. CUB-384. (20 September, 1948)**

*Held:* That the holding of a religious belief which forbids working on a claimant's Sabbath day is good cause for refusing to apply for employment which requires work on that day. (Seventh Day Adventist)

The material facts of the case are as follows:

The claimant made claim for benefit when he separated from his employment as plasterer's helper, and his claim was allowed. Seven weeks later he was notified of employment as a labourer on the night shift at the prevailing rate of pay for a 44-hour work week. He refused to apply for the situation because he was a Seventh Day Adventist and could not work from sundown on Friday until sundown on Saturday.

The insurance officer disqualified him for a period of six weeks on the ground that he had neglected to avail himself of an opportunity of suitable employment. The court of referees reversed this decision, being of the opinion that, had the claimant accepted the employment, it would have interfered with his religious beliefs, and that he was not available for work between sundown on Friday and sundown on Saturday.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"According to the insurance officer's submission, the question to decide is whether the claimant has neglected to avail himself of an opportunity of suitable employment within the meaning of section 40(1)(b) of the Act.

"The refusal by the claimant of employment—which would otherwise be suitable—on the ground that his religious belief forbids him to work on his Sabbath day, is justified as there is no reason to doubt that his religious convictions are honestly held.

"The appeal, therefore, is dismissed."

### **Case No. CUB-385. (20 September, 1948)**

*Held:* That a married woman, out of the labour field for a period of approximately one year and in receipt of unemployment insurance benefit for over five months, and who had been notified of suitable employment at 4.30 p.m. and did not apply for it until noon the following day, when the position was filled, had neglected to avail herself of an opportunity of suitable employment.

The material facts of the case are as follows:

The claimant, a married woman, was employed as a bookkeeper for five years and, at the time of her separation on October 15, 1946 due

to ill health, her salary was \$100 a month. She made claim for benefit a year later, which was allowed, and had been on benefit for five months when she was referred to a position as a clerk at a salary of \$18 to \$23 a week, at 4.30 in the afternoon. She had to go home to look after her child and did not apply for the position until the following noon and then found that the position was filled. The insurance officer disqualified her for a period of six weeks on the ground that she had neglected to avail herself of an opportunity of suitable employment, and the court of referees reversed this decision.

## DECISION

The appeal was allowed.

"The question to decide is whether the claimant should be disqualified under Section 40(1)(b) of the Act in view of her delay in applying for the position notified to her with the D..... Co.

"The evidence indicates that when the claimant was notified of suitable employment with the D . . . Co. at 4.30 p.m. on March 24, 1948, she had been out of the labour field for a period of approximately one year and in receipt of unemployment benefit for over five months. Under the circumstances, it is reasonable to expect that she would have endeavoured at once to secure such employment. She did not report, however, to the prospective employer until noon the next day, when she was told that the position was filled.

"The claimant might have had some justification for not having called at the D..... Co. late in the afternoon of March 24, 1948, but by failing to present herself at that firm early the following morning, she has neglected to avail herself of an opportunity of suitable employment within the meaning of the Act.

"The decision of the court of referees is therefore reversed and the appeal of the insurance officer is allowed. The disqualification of six weeks under section 40(1)(b) is reinstated as from the date that this decision is communicated to the claimant."

## Case No. CUB-386. (21 September, 1948)

**Held:** That whenever a claimant proves that his employment was unsuitable, he shows just cause within the meaning of Section 41(1) of the Act, for having voluntarily left such employment. In each case, the circumstances including the continuance of employment must be considered in order to determine whether or not employment is suitable.

The material facts of the case are as follows:

The claimant, registered for work as a clerk-bookkeeper, was employed by a lumber company as a labourer for a period of six months and made claim for benefit upon separating from this employment. He claimed that the work was not suitable, because he had done nothing but office work since leaving school twelve years previously. The employer stated that the claimant had left to go into business for himself. The insurance officer disqualified the claimant for a period of six weeks on the ground that he had voluntarily left his employment without just cause. The claimant appeared before the court of referees and pleaded that the work was unsuitable by reason of its nature, as well as the

long hours, and that he had taken the job rather than draw benefit during a slack employment period. He also informed the court that he had been looking into the possibility of going into business and that he had now established himself. The court of referees unanimously upheld the decision of the insurance officer.

The chairman granted the claimant leave to appeal to the Umpire.

#### DECISION

The appeal was dismissed.

"Whenever a claimant proves that his employment was unsuitable, he shows just cause within the meaning of Section 41(1) of the Act for having voluntarily left such employment. In each case, the circumstances, including the continuance of employment, must be considered in order to determine whether or not employment is suitable.

"In this instance, the question of suitability does not arise. The court of referees, after having heard the claimant, unanimously found that the real reason why he had voluntarily left his employment, which although not in his own line of work was more remunerative, was that he had 'planned on another occupation'. In view of these facts they rightly felt that he should have retained his employment until he was ready to start in his new work.

"Therefore the appeal is dismissed."

#### **Case No. CUB-388. (21 September, 1948)**

**Held:** That a claimant who operates a fruit market has not ceased to be engaged in business on his own account while his store is closed for alterations. (CUB-264 and CUB-312 referred to.)

The material facts of the case are as follows:

The claimant, who operated a fruit market, was forced to place his stock and fixtures in storage and to close his store for a three-month period in order that alterations to the building might be carried out upon instructions of his landlord. He stated when making claim for benefit that he had no control over this operation and considered himself to be unemployed. He was disqualified by the insurance officer on the ground that he was not unemployed. The court of referees reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed.

"The evidence indicates that the claimant has no intention of winding up his business. He is temporarily idle due to alterations being made to his store and, actually, is in the same position as the claimant in case CU-B. 264, whose business was completely curtailed on account of weather conditions and the one in case CU.-B.312 whose business was temporarily inoperative because he was unable to obtain any contracts or orders. In both instances, a disqualification was imposed

under Section 27(1)(a) on the principle that the claimant's period of self-employment continued even on the days that he happened to be idle.

"As correctly pointed out by the insurance officer, alterations to the business premises occupied by the claimant are a condition incidental to the operation of his business which he will resume immediately upon the completion of the said alterations.

"Under the circumstances, the claimant has failed to prove that he was unemployed within the meaning of section 27(1)(a) of the Act.

"The court of referees erred in their decision and the appeal of the insurance officer is allowed."

#### **Case No. CUB-389. (21 September, 1948)**

**Held:** That a single man, employed for seven years as a stock clerk, had not shown just cause for voluntarily leaving his employment when he refused to be transferred to another branch of the same firm in the same capacity and at the same rate of salary.

The material facts of the case are as follows:

The claimant, a single man, was employed as a stock clerk from 1941 to March 8, 1948. On being informed that he was to be transferred to another city, he requested time to consider the matter and four days later he was told to go that night or he would be dismissed. He did not go and did not return to work and several weeks later, the employer stated, he was again given an opportunity to accept the transfer but would not give a definite decision. The claimant contended that the transfer was arranged because of his union activities, the company stating that it was necessary due to the slack season. The insurance officer disqualified him for a period of six weeks on the ground that he had lost his employment by reason of his misconduct. The court of referees, by majority decision, held that he had voluntarily left his employment without just cause and imposed a six weeks' period of disqualification.

The claimant appealed to the Umpire.

#### **DECISION**

The disqualification on the ground of voluntary leaving, imposed by the court of referees, was confirmed and the appeal was dismissed.

"The claimant although fully aware that failure to accept the transfer requested by his employer would cause the loss of his employment, refused to accept this transfer. Therefore, the court of referees rightly found that the claimant, while not guilty of misconduct, had voluntarily left his employment. The question now to decide is whether he has shown just cause within the meaning of the Act for having done so.

"The claimant's main contention is that the transfer was forced upon him because of his alliance with a union and his activities connected therewith. The court of referees, however, after having heard his testimony and that of his representatives stated that while 'it may be conjectured' that such was the case, they 'refrained from finding as a fact that the transfer was by way of a rebuke [to] the claimant'. The dissenting member did not express his opinion on this particular matter.

"The question as to whether the transfer was forced upon the claimant on account of his union activities, is entirely one of fact and after a careful study of the evidence, I do not see any valid reason to differ from the finding of the court of referees on this point. Had the claimant succeeded in proving that the proposed transfer was really in retaliation of his lawful union activities, he would, in my opinion, have been justified in refusing such transfer.

"The claimant further contends that he was given too short a notice of the transfer. It transpired, however, from his testimony before the court of referees, that he had four days to make up his mind. This would seem a reasonable period of time taking into consideration that he is single and was boarding in M..... and was informed, as revealed by an uncontested statement of the employer, that he would have been given a week's leave of absence from D..... to return to M..... to adjust his personal affairs. Furthermore, it is to be noted that the position in D..... was kept open for him for a few weeks and that after his actual separation from the company, he was again offered the opportunity of accepting this transfer. As to the claimant's last contention that the employment in D..... was on conditions less favourable than those 'which he might reasonably expect to obtain having regard to the prevailing conditions', it is indicated in the submissions that his rate of wages and type of work in D..... would have been the same as in M.....

"For all these reasons, I find that the claimant has not shown just cause for having voluntarily left his employment within the meaning of section 41(1) of the act, and, the appeal is dismissed."

#### **Case No. CUB-390. (21 September, 1948)**

**Held:** That a claimant who had been absent from work and upon her return refused to give a reason for her absence and was consequently discharged, lost her employment by reason of her own misconduct within the meaning of Section 41(1) of the Act.

The material facts of the case are as follows:

The claimant, on making claim for benefit, stated that she had lost her employment because she had been absent for two days, for the first time in three years. The employer stated that she had been away from work for two days and that when she returned she was asked why she had been absent and she informed the inquirer that it was none of her business, although the person requesting the information had the authority to inquire. As a consequence, it was necessary to discharge the claimant. The insurance officer was of the opinion that she had lost her employment because of absenteeism coupled with refusal of an explanation therefor, which constituted misconduct, and disqualified her from receipt of benefit for a period of six weeks. This decision was upheld by a majority decision of the court of referees.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"The question to decide is whether the claimant lost her employment by reason of her own misconduct within the meaning of Section 41(1) of the Act.

"There is no point of law involved in this case; it is entirely a question of fact. The court of referees had the opportunity of hearing the claimant and after having carefully examined all the circumstances of the case found that she had lost her employment by reason of her own misconduct within the meaning of section 41(1) of the act.

"The appellant's submission in tone and substance does not disclose any reason to disturb the finding of the court of referees.

"The appeal is dismissed."

#### **Case No. CUB-391. (22 September, 1948)**

**Held:** That being primarily a farmer, the claimant must be considered under the Act as being self-employed, and cannot qualify for the receipt of benefit even if he is temporarily available for work. (CUB-363 referred to.)

The material facts of the case are as follows:

The claimant worked as a carpenter for a firm of contractors for approximately a month and made claim for benefit immediately upon being laid off due to shortage of work. He stated that he owned a seventy-acre farm and stock consisting of 3 cows, 2 horses, 2 calves, 8 sheep, 2 pigs and 30 hens, and that the farm had been operated by his sons, to whom he paid wages. The insurance officer disqualified him on the ground that he was not unemployed, being self-employed as a farmer, and the court of referees unanimously upheld this decision.

The chairman granted the claimant leave to appeal to the Umpire.

#### **DECISION**

The appeal was dismissed.

"Has the claimant proved that he is unemployed within the meaning of Section 27(1)(a) of the Act.

"The claimant contends that his main occupation is that of a carpenter and not of a farmer since 'he works out at all time during the year when he can get work'.

"The question of whether carpentry or farming is the claimant's main occupation is entirely one of fact.

The court of referees, after having heard the claimant, unanimously decided that 'his operations on the farm are carried on and performed during the whole of the year' . . . that . . . 'he must be regarded as self-employed'. This finding implies that, although the claimant might be intermittently employed as a carpenter, his main occupation is that of a farmer.

"As the record concerning the claimant's current contributions indicates that 48 contributions were placed to his credit during brief engagements as a carpenter between April, 1947 and January, 1948, I do not see any valid reason to differ from this finding of the court of referees.

"Being primarily a farmer, the claimant must be considered under the Unemployment Insurance Act, as self-employed and cannot qualify for the receipt of benefit even if he is temporarily available for work.

"This matter of self-employment has been fully dealt with in decision CUB-363, copy of which is attached hereto.

"The claimant has failed to prove that he is unemployed within the meaning of Section 27(1)(a) of the Act and the appeal is dismissed."

### **Case No. CUB-392. (22 September, 1948)**

**Held:** That the Act having been in operation for many years, alleged ignorance of its provisions cannot be accepted as good cause for antedating a claim for benefit.

The material facts of the case are as follows:

The claimant underwent a serious operation and his employer granted him leave of absence for a period of three months, after which he was laid off. He made claim for benefit on October 29, 1947, and requested antedating to September 1, 1947, producing a medical certificate to the effect that he had been able to work since that date. He stated that he had been misinformed by his employer with regard to his rights under the Unemployment Insurance Act, some confusion having arisen due to the fact that during the first three months of his illness he drew benefit from a group insurance plan. This statement was corroborated by the employer. The insurance officer allowed the claim but did not approve the request to antedate, being of the opinion that the delay in making claim was the responsibility of the claimant, and the court of referees, by majority decision, upheld this decision.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The question to decide is whether the claimant has shown good cause for having delayed in filing his claim for benefit.

"The claimant submitted evidence to the effect that he was capable of and available for work as from September 1, 1947. It seems, however, that it was only on or about September 27, 1947, that he sought information regarding his eligibility for unemployment insurance benefit when, as stated by the court of referees in their decision, he communicated with [his employer] about his insurance book.

"The claimant might have been misinformed by his employer as to his rights 'to collect' unemployment insurance benefit, but nothing prevented him, if he were genuinely seeking work, from registering at the employment office as soon as he was available for work. Had he done so, he would have received at that office, correct information concerning his rights under the Unemployment Insurance Act.

"On the facts before me, I agree with the court of referees that the claimant has not shown good cause for having delayed in filing his claim for benefit.

"As stated in previous decisions, the Unemployment Insurance Act having been in operation for many years, alleged ignorance of its provisions cannot be accepted as a valid reason for antedating a claim.

"The appeal is dismissed."

### Case No. CUB-393. (22 September, 1948)

**Held:** That a woman who worked approximately three hours per day for seven days a week, for nearly two years, did not have just cause for leaving voluntarily merely because of a desire to avoid working for two hours on Sunday, no religious scruples being alleged, and Sunday work being not unusual in the occupation which was being followed by the claimant (chambermaid).

The material facts of the case are as follows:

The claimant, a married woman, was employed as a chambermaid in a hotel in a small town (population 571) for a period of almost two years, working from 9:00 in the morning until noon every day except Sunday, when she worked from 1:00 till 3:00 p.m. She informed her employer of her intention to discontinue working on Sundays, which resulted in her leaving her employment. The insurance officer disqualified her for a period of six weeks on the ground that she had voluntarily left her employment without just cause and this decision was unanimously reversed by a court of referees which was of the opinion that she had gone without the normal free day each week, usually available to an employed person, a sufficiently long time and was entitled to leave her employment when this was denied her.

The insurance officer appealed to the Umpire.

### DECISION

The appeal was allowed.

"According to her own statement, the claimant voluntarily left her employment. The question therefore to decide is whether she has shown just cause for having done so.

"The only reason given by the claimant for having left her employment with the . . . hotel was that she did not want to work on Sunday.

"Sunday work, as stated by the insurance officer in his submission to me, is not unusual in many occupations and particularly in the occupation followed by the claimant. There is no indication 'that her objection was because of religious scruples', and, according to the evidence, the terms of her employment did not contravene Provincial Labour Regulations. Finally, being employed on a part-time basis, her time was her own, if she chose, every afternoon from Monday through Friday and she had twenty-four hours period rest from Saturday noon to Sunday noon. It is to be noted that she worked for approximately two years under such conditions.

"Since the claimant has restricted her availability for work to her home town which has a small population, she should have realized the difficulty she might experience in finding another position. Instead of leaving suitable employment and throwing herself on to the Unemployment Insurance Fund, she should have sought during her time off, the type of work she desired.

"For these reasons and in accordance with the principles which have been laid down in previous decisions, the claimant has not shown just cause within the meaning of Section 41(1) of the Act for having voluntarily left her employment. She is therefore disqualified for a period of six weeks as from the date that this decision is communicated to her."

### **Case No. CUB-394. (22 September, 1948)**

**Held:** That a claimant, a skilled worker, who had been unemployed for a period of approximately 4½ months, must be prepared to accept employment of a kind other than his usual occupation at the prevailing rate of pay in the district. Subsection 3 of Section 40 of the Act must necessarily apply to all insured persons including those who follow a highly skilled occupation.

The material facts of the case are as follows:

The claimant, a single man, aged 22 years, registered as a beef boner, was last employed for 5 weeks as a floorman by a clothing manufacturer at a salary of \$35 a week. He had been unemployed for 4½ months when he was notified of employment as a labourer with a construction company at 70 cents an hour for a 44-hour week, which was considered suitable in view of the prolonged period of unemployment. He refused to apply for the work because the wages were too low and he did not want to do construction work. On the same day he was notified of employment as a shop helper in a sheet metal factory at a wage of 60 cents an hour for a 44-hour week. He refused to apply for this work also, because the wages were too low.

The insurance officer disqualified him for a period of six weeks on the ground that he had without good cause refused to apply for a situation in suitable employment, and the claimant appealed to a court of referees, which, by a majority decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

### **DECISION**

The appeal was dismissed.

"The question to decide is whether the claimant has without good cause refused to apply for a situation in suitable employment.

"In his submission to me the claimant states that he had good cause for refusing to apply for the work offered to him because it was employment of a kind other than that in his usual occupation. He had already admitted in his submission to the court of referees that 'he had been applying for jobs in his usual line of occupation but that there were not any available at that time'.

"Subsection 3 of Section 40 reads as follows:

"After a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is

employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

"The evidence indicates that the claimant had been unemployed for approximately four months and a half and in receipt of benefit for nearly three months, when he was offered employment of a kind other than that in his usual occupation, but at the prevailing rate of pay in the district.

"Considering all the circumstances of the case, I find that the court of referees has rendered a decision which is in accordance with the provisions of the Act and previous decisions of the Umpire.

"In relation to the opinion expressed by the dissenting member of the court of referees, I wish to draw his attention as well as that of other interested parties to the following statement which I made in decision CUB-302:

"Subsection 3 of Section 40 of the Act (above quoted) must necessarily apply to all insured persons, including those who follow a highly skilled occupation. Otherwise, the mass of workers who contribute to the fund would be greatly prejudiced."

"The claimant has without good cause refused to apply for a situation in suitable employment and his appeal is dismissed."

### **Case No. CUB-395. (22 September, 1948)**

**Held:** That a claimant, having made claim for benefit and having failed to report as directed at the local office during the succeeding month while awaiting the result of his unsuccessful application for receipt of Workmen's Compensation benefit, had not established good cause for antedating his renewal claim. A claim for antedating to be successful must be supported by evidence that the claimant was prevented from attending at a local employment office by conditions over which he had no control.

The material facts of the case are as follows:

The claimant applied for benefit on April 27, 1948 and was requested by the local office to produce a medical certificate in order to prove his capability. Not having done so, he was disqualified on the ground that he was not capable of work. He did not report to the local office again until May 26, when he made a renewal claim and supplied a medical certificate, on the basis of which the disqualification was lifted as of that date. He told the local office that his former employer had advised him not to press his claim for unemployment insurance benefit until he had received the report of the Workmen's Compensation Board in connection with his claim for compensation. This report had now been received and, compensation having been denied him, he wished to apply for antedating of his renewal claim to April 27. The insurance officer did not approve of the request to antedate and this decision was reversed by a majority decision of the court of referees.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"I am asked to decide whether the claimant has shown good cause for having delayed in filing his claim for benefit.

"In previous decisions I have laid down the following rule:

"'In cases where an insured person requests a claim for benefit to be antedated, to establish good cause he must show:

"'That he was prevented from attending at a local employment office by conditions over which he had no control.'

"In this instance the evidence does not indicate that the claimant was prevented from attending at the local office by conditions over which he had no control. He chose for reasons of his own, not to comply with the request of the local office to file a medical certificate until his application for compensation under the Workmen's Compensation Act had been dealt with.

"Under the circumstances, I find that the claimant has not shown good cause for having delayed in filing his claim for benefit. Therefore the decision of the court of referees is reversed and the appeal of the insurance officer is allowed."

#### **Case No. CUB-396. (4 October, 1948)**

**Held:** That a trucker engaged in business on his own account must be considered to have continued in this business even when no work was available for his truck. Held also that a court of referees may hear facts which were not brought to the attention of the insurance officer, but these facts must be relevant to the question submitted to the court. Under Section 66(1) its decision may cover all questions arising in relation to such claim as laid before the insurance officer.

The material facts of the case are as follows:

The claimant, on benefit, informed the local office on April 20, 1948 that he had bought a truck about three weeks before and that he had a licence which permitted him to cart lumber and materials for road-building, but had been unable to make more than three trips owing to the fact that the roads were closed to heavy transport due to the spring break-up. The insurance officer disqualified him as of April 20, 1948, on the ground that he could no longer prove that he was unemployed.

The claimant appealed to a court of referees and informed the court that on May 13 he had refused work in his usual occupation because he did not wish to work for the short time before the roads would be opened up, when he could again use his truck. The court unanimously allowed the claim until May 13 and disqualified the claimant from that date on the ground that he was not available for work other than with his truck. The court also disqualified him for a period of six weeks as from May 13 on the ground that he had without good cause refused to accept a situation in suitable employment which had been offered to him.

The insurance officer appealed to the Umpire from the decision of the court of referees in finding that the claimant was unemployed from April 20 to May 12, and in imposing a disqualification for non-availability as of May 13. He also appealed on the ground that the imposition of the disqualification for six weeks from May 13, for refusing to accept

employment, was not well founded and was not within the jurisdiction of the court, as an offer of employment was made only on May 13, 1948 and, consequently, was not a fact before the insurance officer when he adjudicated on the claim.

## DECISION

The appeal was allowed, the claimant was disqualified as of April 20, 1948, until he proved that he was unemployed, and the disqualification imposed by the court of referees on the ground of refusal to accept a situation in suitable employment was removed, because the action of the court was outside its jurisdiction.

"The question to decide is whether the claimant has proved that he is unemployed within the meaning of Section 27(1)(a) of the Act.

"The evidence indicates that the claimant is the owner of a trucking business and is actively engaged in the operation thereof. He is, therefore, self-employed and does not meet the requirements of Section 27(1)(a) of the Act.

"The attention of the court of referees was drawn to previous decisions of the Umpire dealing with matters of self-employment. Apparently, they either overlooked or chose to ignore the following principle which is to be found in these decisions:

"When an insured person under the Act enters into business on his own account and thereby becomes self-employed, he places himself outside the scope of the unemployment insurance plan for the duration of his self-employment. The period of self-employment continues even on days when he happens to be idle and he cannot draw any benefit during the whole of that period, no matter what his volume of business or remuneration may be."

"The court of referees erred in disqualifying the claimant under Section 27(1)(b) of the Act. In decision CU.-B.363, I pointed out that availability for work is not the deciding factor in cases of self-employment. To be unemployed and to be available for work are two different conditions both of which have to be fulfilled, along with the other requirements of the Act, before a claimant may be entitled to receive benefit.

"The insurance officer has rightly imposed an indefinite disqualification, under Section 27(1)(a), as from April 20, 1948, the date on which the claimant made his first declaration concerning his self-employment. It is to be noted that the claimant stated on April 30, 1948, that he had 'used [his] truck a little, carting lumber [that he had] made three trips of lumber and [had] received \$15 a trip'.

"The insurance officer, in his appeal to me asked whether 'Section 66(1) of the act gives a court of referees the right to deal with a question, which had not occurred and therefore was unknown to the insurance officer and was not dealt with by him (Section 54) and which had not been referred to the court for a decision.'

"In CUB-8, I pointed out that the mechanism of the adjudication of a claim under the Act was simple, devoid of any complicated formality in order to function with celerity and without useless cost. Speaking of courts of referees, I mentioned that they were administrative boards,

not courts of justice, nor judicial tribunals holding a regular trial subject to rules of a rigid procedure.

"Subject to the above, a court of referees may hear facts which were not brought to the attention of the insurance officer, but these facts must be relevant to the question submitted to them. Under Section 66(1), their decision may cover all questions arising in relation to such claim as laid before the insurance officer.

"In this case, however, the claimant, in the course of his testimony before the court of referees, stated that he had refused an offer of employment on May 13, 1948, and the court of referees disqualified him on that ground for a period of six weeks. This refusal of an offer of employment by the claimant was another indication that he was self-employed, but could not be taken as the basis for a disqualification under Section 40(1) (a) of the Act, because that offer had not been made nor was it known to the insurance officer when he adjudicated upon this case. Consequently, the court of referees erred in disqualifying the claimant under Section 40(1) (a) of the Act.

"The appeal of the insurance officer is allowed and the claimant is disqualified from receipt of benefit until and unless he proves he is unemployed within the meaning of the Act."

#### **Case No. CUB-397. (4 October, 1948)**

**Held:** That a claimant who voluntarily leaves employment in order to attend to personal affairs or to rest, unless it is shown that such rest is needed on account of ill-health, has not established just cause for leaving. (CUB-112 and CUB-377 referred to.)

The material facts of the case are as follows:

The claimant, a married woman, made claim for benefit on March 31, 1948, stating first that she had left her employment on March 9, 1948, in order to attend to some household duties for which she had not had time while she was employed, and later that she had terminated her employment due to ill-health but that she was again available for work. She was disqualified for a period of six weeks on the ground that she had voluntarily left her employment without just cause. The court of referees removed the disqualification for voluntarily leaving her employment but unanimously disqualified her as from March 10 on the ground that she was not available for work, the disqualification to last until she proved availability.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed and the claimant disqualified on the ground that she had voluntarily left her employment without just cause.

"The first point to consider in this case is whether the claimant voluntarily left her employment.

"The claimant indicated in her own submissions that she chose to absent herself from her position with the ..... , being fully aware that it would not be kept open for her. The employer stated that the claimant voluntarily left her employment and 'told them that she

wished to cease working'. Under the circumstances, it is evident that her separation from work was of a voluntary nature.

"Has the claimant shown just cause for having voluntarily left her employment?

"The claimant first contended that she had to attend to personal work at her home and, later on, stated that she had to take a few days off on account of health reasons. The court of referees in this respect, commented in their decision that 'all insured persons had the right to take a rest or to absent themselves for justifiable reasons'.

"Leaving one's employment in order to attend to personal affairs cannot be regarded as just cause or 'justifiable reason' within the meaning of Section 41(1) of the Act (CUB-112 and 377). Neither can the desire to 'take a rest' be regarded as just cause within the meaning of that Section, unless it is shown that such rest is needed on account of health reasons; but then, the question of availability for work would arise. In this case, the claimant has not supported by any evidence her contention that she left her employment on account of ill health.

"Under the circumstances, the decision of the court of referees is reversed, and the appeal of the insurance officer is allowed.

"Taking into consideration that the claimant's disqualification, in the first instance, was retroactive to the date she voluntarily left her employment, she is now disqualified for a period of three weeks as from the date that this decision is communicated to her."

### **Case No. CUB-398. (4 October, 1948)**

**Held:** That a claimant, being engaged in a manufacturing business on his own account, does not cease to be so engaged when the plant is closed while he repairs the machinery and installs a new machine.

The material facts of the case are as follows:

The claimant worked as an accountant for a contractor from the spring of 1947 until January 17, 1948, when he was laid off due to shortage of work. He made claim for benefit on January 19, 1948 and informed the local office that he had been operating a sash factory in the basement of his home, with machinery to the value of approximately \$4,000, and employing from two to five men. He produced a balance sheet showing a loss of \$431.34 for the calendar year 1947. The insurance officer considered that he was not unemployed but was in business on his own account, and disqualified him until he proved that he was unemployed.

The claimant appeared before a court of referees, submitting that he operated his small business only during the summer months and was available for work during the winter. He also said that between December 20, 1947, and April, when he re-opened the plant, he was engaged in repairing and installing new machinery to bring his output from 25 sashes a day to 100. The court unanimously upheld the decision of the insurance officer and the claimant requested the permission of the chairman to appeal to the Umpire.

Due to illness of the chairman, and in order to avoid undue delay, the insurance officer appealed to the Umpire.

## DECISION

The appeal was dismissed.

"Notwithstanding the doubtful procedure adopted, I have nevertheless examined carefully all the facts and submissions of the case. The principle involved has been dealt with in many previous decisions, and the court of referees has rightly applied these decisions to the present case.

"Under the circumstances, I do not see any valid reason to alter the unanimous decision of the court of referees.

"The appeal is dismissed."

### **Case No. CUB-399. (4 October, 1948)**

**Held:** That in order to obtain benefit in any benefit year except his first, a claimant must establish the fact that 60 contributions have been paid in respect of him since the commencement of his immediately preceding benefit year.

The material facts of the case are as follows:

The claimant made claim for benefit on March 29, 1947 and remained on benefit until July 11, 1947, when he became incapacitated due to illness. On May 10, 1948, having recovered his health, he made an initial claim for benefit which was disallowed by the insurance officer because he did not have 60 days' contributions to his credit since the commencement of his immediately preceding benefit year. The claimant appealed to a court of referees, requesting an extension to cover the period of his illness, and the court unanimously upheld the decision of the insurance officer.

With the permission of the chairman, the claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"There is no dispute either as to fact or law. The claimant could not show any contributions since the commencement of his last benefit year and, consequently, could not meet the condition stated in Section 28(1) (a) (ii) quoted hereunder:

"'28(1) The right of an insured person to receive insurance benefit shall be subject to the following conditions (in this Act referred to as "statutory conditions"), namely:

(a) that contributions have been paid in respect of him while employed in insurable employment

(i) .....

(ii) in the case of each benefit year except his first, for not less than sixty days since the commencement of his immediately preceding benefit year.'

"Although I have every sympathy for the claimant, I must repeat what I have already stated in previous decisions, that I am bound by the provisions of the Act and that I have, therefore, no authority to override Section 28(1) (a) (ii) of the Act.

"Under the circumstances, the appeal is dismissed."

### **Case No. CUB-400. (4 October, 1948)**

**Held:** 1. That the insistence by one party on acceptance of certain conditions of work at the factory, namely, the existence of a union, and resistance to the same by the other party—insistence and resistance which are manifested in turn by negotiations, strikes, picketing and lock-out—constitute evidence that a labour dispute exists, as the various incidents or groups of incidents bear direct relationship. 2. That a union member was not relieved from disqualification by reason of the fact that she was on vacation when a labour dispute resulted in a stoppage of work, although she would have returned to her employment upon conclusion of the vacation if the stoppage had terminated.

The material facts of the case are as follows:

The claimant was absent on vacation when a stoppage of work due to a labour dispute between the employer and the union of which she was a member occurred at the plant where she was employed.

The union had been endeavouring to increase its membership in order to obtain recognition as a bargaining agent for all employees, and the company opposed the move. The union membership had been falling off and there were indications that the employer was responsible for this situation. The controversy came to a head on March 29, 1948 when the employer laid off five key employees.

As this action might have caused a dislocation in the operation of the plant, which would have resulted in the dismissal of some seventy employees (many of whom would be union members) it was interpreted as a move to "kill" the union. That evening, a protest meeting of union members was held and a general strike was agreed upon for the next day, at which time the plant was picketed and access to the factory was denied to everyone except the manager and one watchman. During the day, however, the central committee of the union arranged for a mass return to work on April 1, as the provincial regulations governing strikes had not been complied with. The employer refused to re-open the plant and, on April 1, published a notice in the local newspaper to this effect. Negotiations were resumed and on May 3 the company advertised in the newspapers that the strike had ended and that applications for employment would be accepted, but the employees refused to resume work when they were required to complete new applications which would have entailed a loss of seniority. Picketing and public demonstrations took place, while negotiations continued, and it was finally agreed that the plant would be re-opened on June 2, 1948. This actually took place, to a limited extent.

The insurance officer disqualified this claimant and others as from April 1, the date on which they made claim, on the ground that they had lost their employment by reason of a stoppage of work due to a labour dispute and that the stoppage had not been interrupted by the willingness of the employees to resume work on April 1. It was also his opinion that the action of the employer in locking out the employees on April 1 was merely one of a group of incidents evolving out of the dispute between the employer and his employees regarding recognition of the union.

The claimant appeared before the court of referees, as did a representative of the union and of the employer. The unanimous decision of the court was that the labour dispute had ceased on March 31 and that

on and after April 1 the stoppage of work was due to economic conditions, as indicated by the employer's newspaper advertisement.

The insurance officer appealed this claim to the Umpire, as a test case. The union also made representations to the Umpire.

## DECISION

The appeal was allowed, and the stoppage of work was declared to have been in existence on April 1, 1948 and subsequent thereto.

"From the facts and submissions before me, it is established that the claimant lost her employment on account of a stoppage of work which took place at the . . . Ltd. on March 30, 1948.

"The first question to decide is whether that stoppage of work was due to a labour dispute within the meaning of the Act.

"A labour dispute is defined in section 2(1) (d) of the Act as follows:

"“Labour dispute”, means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not.'

"It is rightly admitted by all interested parties that the . . . Ltd., was first closed down on account of a strike. A strike (or a lock-out) 'which is connected with the employment or non-employment, or the terms or conditions of employment of any persons . . .', by its very essence, is part of and can only be attributed to a labour dispute. Therefore, it is self-evident that while the employees were on strike for one of these reasons, the stoppage of work at that plant could only be due to a labour dispute.

"The court of referees, however, found that the strike ceased on March 31st and that on and after April 1st, the stoppage of work at the plant was caused by the lack of material which resulted in a mass lay-off.

"On the evidence before me, I am of the opinion that the stoppage of work at the . . . Ltd., from April 1, 1948 to May 3, 1948, was due to a lock-out resulting from the initial labour dispute, as the employer closed down his factory in retaliation of the action of his employees. This is borne out by the union representative's submission to me wherein he stated that:

"The truth probably is that the employer has taken advantage of a decrease in production caused by a shortage of materials to compel his employees to quit the union."

"The facts further indicate that when the employer decided to reopen his factory on May 3, 1948, on his own conditions, the employees refused to return to work, picketed the plant and negotiations took place. As a result of these negotiations, the plant was partially re-opened on June 2, 1948.

"All these incidents which occurred at the . . . Ltd. reveal an insistence of the employees and a resistance of the employer on certain conditions of work at the factory, namely the existence of a

union. The insistence and resistance referred to were manifested in turn by strikes, picketing, lock-out and negotiations. All these are the main characteristics of a labour dispute, which characteristics have already been described in previous decisions. (CU-B. 190, 379, etc.)

"The insurance officer has rightly contended that the court of referees erred in their decision, because they did not realize that the various incidents or groups of incidents which occurred prior and subsequent to the commencement date of the stoppage of work, bore direct relationship. This error, however, is probably the result of the disappointing vagueness of certain answers given by the employer and also of many incidental matters brought out at the hearing which are not, in my opinion, material to the real issue.

"The stoppage of work, therefore, at the . . . Ltd. on and after March 30, 1948, was due to a labour dispute.

"The question which remains to be decided is whether, under the circumstances, the claimant has proved that she should be relieved of the disqualification imposed under Section 39 of the Act.

"The claimant, in her appeal to the court of referees, stated that she is a member of the 'Syndicat national des employés de la . . . . . Ltd.'. The non-recognition of this union by the employer was the reason of the labour dispute. The claimant, being a member of this union, is therefore directly interested in this dispute which caused the stoppage of work.

"The claimant has contended that because she was on holidays when the stoppage of work occurred, she should not be disqualified from the receipt of benefit. There is no indication that when she was on holidays, she had any intention of leaving her work with the . . . . . Ltd., and, in fact, it is indicated that she was ready to return to her employment upon conclusion of those holidays.

"The claimant is disqualified from the receipt of benefit for the duration of the stoppage of work at the . . . . . Ltd. Those associated with her in this appeal have stated that they were also members of the 'Syndicat national des employés de la . . . . . Ltd.'. For the same reasons, they must be similarly disqualified."

#### **Case No. CUB-401. (29 October, 1948)**

**Held:** That an insured person who failed to report for work at the termination of a recognized holiday was properly disqualified for neglecting to avail himself of an opportunity of suitable employment.

The material facts of the case are as follows:

The claimant was disqualified for a period of six weeks on the ground that he had neglected to avail himself of an opportunity of suitable employment when he did not return to his work as a toolsmith with a granite producing company after a recognized Christmas holiday which terminated on January 5, 1948. When applying for benefit on that date, he said that his separation was due to bad working conditions, lack of heat to dry clothing, and poor living accommodation. On appealing to a court of referees, he submitted that there were hard feelings between himself and his foreman, which were the result of several

incidents which he related, and that he was laid off when he reported back to work on January 5. The employer contended that he had not returned to work on January 5. The claimant and a representative of the union of which he was a member appeared before the court, which accepted the claimant's statement that he had been laid off, and unanimously reversed the decision of the insurance officer. The employer later informed the local office that their foreman denied the existence of ill-feeling between himself and the claimant, that the claimant had told their vice-president that he would not return to work on the 5th of January, and that one of their employees had refused the claimant's request that he corroborate, at the local office, the claimant's story that he was laid off. The court was asked to rehear the case and, in light of the information received from the employer, reversed its previous decision and disqualified the claimant for six weeks as from the date on which the decision was communicated to him.

The union appealed to the Umpire, stressing the fact that the claimant had left his tools on the job and had been put to the expense of returning for them on April 18, claiming also that he would have applied for benefit prior to January 5 if he had not intended returning to work. The union also disputed the accuracy of the statements made by the employer and questioned the right of the court to accept the hearsay evidence of a fellow-worker who had not appeared before the court. The insurance officer referred the claim to the court of referees again, in order that the claimant, his representative, and the vice-president of the employer might have an opportunity of giving evidence, and the court unanimously confirmed its previous decision.

The union appealed to the Umpire from the last decision of the court.

## DECISION

The appeal was dismissed.

"This case, which is entirely one of fact, has been before the court of referees on three separate occasions. During these hearings the claimant and his representative have appeared twice. On their second appearance, the employer's representative was also present and gave evidence.

"The court of referees, which obviously went exhaustively into all the facts and submissions of the case, unanimously decided to reinstate the disqualification imposed by the insurance officer.

"On the evidence before me, I do not see any valid reason to disturb their unanimous decision.

"The appeal is therefore dismissed."

## Case No. CUB-402. (29 October, 1948)

**Held:** That a claimant who was notified of suitable employment in her usual occupation, who declined to adjust her domestic circumstances to conform to the conditions of that employment, and who consequently was not given the opportunity to interview the prospective employer, had nevertheless refused to apply for suitable employment.

The material facts of the case are as follows:

The claimant was a married woman who had been unemployed and on benefit for a period of two months when she was notified of employ-

ment of a month's duration in her usual occupation of stenographer, at the prevailing rate of pay. She would have applied for the employment had it been for three weeks or less, but, she intended to leave at the expiration of that period to join her husband who was a 'veteran' student in another city. As she would not apply for the employment as notified to her, no referral was made and she was disqualified for a period of four weeks on the ground that she had without good cause refused to apply for a situation in suitable employment. The court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The claimant restricted her availability for work to temporary employment, as she expected to leave V..... to reside in N..... Such employment, for one month's duration, was found for her by the local office, in her own line of work, and at the prevailing rate of pay in the district. She refused to apply for the position as offered, because she expected to move to N..... within a month; she stated, however, that she would 'accept it for three weeks'.

"On the evidence before me, I consider that it was reasonable to expect that the claimant, if she was in the labour field and genuinely seeking work, would have accepted the employment as offered to her, and adjusted her domestic circumstances accordingly. This she failed to do and she was rightly disqualified by the insurance officer.

"I cannot agree with the finding of the court of referees that 'the appellant was actually refused the job', for the reason that the position was available to her but that she would not meet one of its requirements.

"Under the circumstances, the appeal is allowed and the disqualification previously imposed by the insurance officer is reinstated as from the date that this decision is communicated to the claimant."

## Case No. CUB-403. (8 November, 1948)

**Held:** That in order to receive benefit at the dependency rate a claimant must show continuity of the dependency status to a degree such that its genuineness may not remain doubtful.

The material facts of this case are fully covered in the decision of the Umpire.

## DECISION

The appeal of the insurance officer was allowed.

"Benefit at the dependency rate is asked by the claimant on the contention that her husband, because he is unemployed, is dependent upon her within the meaning of paragraph (b) of Section 31(2) [of the Act] quoted above.

"According to the submissions, the claimant and her husband are employed, from Spring to Fall, at the ..... Country Club, a summer resort, in ....., as manageress and chef respectively. The claimant is

paid \$215 a month and her husband \$50 a week. In October, 1947, both were laid off as the tourist season had ended. After a few weeks of illness, the husband, in November, 1947, applied for unemployment insurance benefit at the 'dependency rate' indicating that his wife's status in relation to himself was that of a dependent. The claim was allowed and the husband received benefit until the middle of February, 1948, when his benefit rights under the Act were exhausted. The claimant in turn applied for benefit, also at the dependency rate, indicating that the status of her husband in relation to herself was that of a dependent, and in this connection I quote her own words: '(My husband) drew unemployment insurance until it expired about three weeks ago claiming me as a dependent, now I wish to reverse the procedure until we start back to work on May 1, at the ..... Country Club.'

"In order to receive benefit at the dependency rate, the claimant must show a continuity of relationship of dependency to a degree such that its genuineness may not remain doubtful. This condition is not fulfilled in this instance.

"Moreover, after a perusal of the documents, I seriously doubt that the claimant's availability for work within the meaning of the Act has been established.

"Under the circumstances, I consider that the court of referees erred in their decision and the appeal of the insurance officer is allowed."

#### **Case No. CUB-405. (8 November, 1948)**

*Held:* That the benefit of the doubt must be given to the claimant where conflicting evidence is produced; misconduct must be conclusively proven.

The material facts of the case are as follows:

The claimant had been employed by a shipbuilding firm as a plater and on making claim for benefit stated that he had lost his employment because he had been absent from work. The statements of the employer and of the claimant in regard to the circumstances connected with the alleged absenteeism conflicted, but the insurance officer considered that the claimant had lost his employment by reason of his own misconduct and disqualified him for a period of six weeks. The claimant appealed to a court of referees, before which he appeared together with a representative of the union of which he was a member, and the majority of the court was of the opinion that the evidence was too conflicting to warrant reversing the insurance officer's decision.

The union appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"In cases of misconduct, previous decisions are to the effect that:

"Where misconduct is given as a cause for separation from employment, such misconduct must be proved by the parties who make the allegations. Misconduct cannot be assumed, it must be conclusively proven before a claimant can be disqualified from receipt of benefit."

This principle must apply in the present instance.

"In their conclusion, the court of referees stated:

"The evidence is very conflicting but we are of the opinion, Mr. C..... dissenting, that the evidence is too conflicting to override the decision of the insurance officer; we accordingly dismiss the appeal with C..... dissenting and confirm the disqualification imposed by the insurance officer."

"I agree that the evidence 'is very conflicting'. Therefore, in view of the above-mentioned principle, the benefit of the doubt must be given to the claimant.

"The appeal is maintained."

#### **Case No. CUB-406. (8 November, 1948)**

**Held:** That no adjudicating authority has power to override the provisions of the Act; 60 daily contributions must be shown after the establishment of a benefit year before a subsequent benefit year can be established.

The material facts of the case are as follows:

The claimant had been employed as an office nurse from May 18, 1946 to May 17, 1947. She made claim for benefit on May 27, 1947 and received two days' benefit. She then took a five-week course, finishing on July 14, 1947. She did not apply for benefit upon completion of the course and, on September 1, commenced a nine-month course. On May 27, 1948 she made another claim for benefit, but a benefit year was not established because 60 daily contributions had not been paid in respect of her since the commencement of her previous benefit year on May 27, 1947. The claimant appealed to a court of referees which unanimously upheld the decision of the insurance officer.

The chairman granted the claimant leave to appeal to the Umpire in order that the intent, as well as the strict interpretation of the Act, might be dealt with.

#### **DECISION**

The appeal was dismissed.

"There is no dispute either as to fact or law. The claimant could not show any contributions since the commencement of her last benefit year and consequently, could not meet the conditions stated in Section 28(1) (a) (ii) of the Act quoted hereunder:

"The right of an insured person to receive insurance benefit shall be subject to the following conditions (in this Act referred to as "statutory conditions"), namely:

- (a) that contributions have been paid in respect of him while employed in insurable employment
  - (i) .....
  - (ii) in the case of each benefit year except his first, for not less than sixty days since the commencement of his immediately preceding benefit year.'

"Although I have every sympathy for the claimant, I must repeat what I have already stated in previous decisions, that I am bound by the provisions of the Act, and that I have, therefore, no authority to override Section 28(1) (a) (ii) of the Act.

"I wish to point out, however, that the claimant's '303 days' claim' are not 'written off', but will be available when she fulfills the requirements of the Act.

"Under the circumstances, the appeal is dismissed."

### **Case No. CUB-407. (8 November, 1948)**

**Held:** That a claimant, by insisting on accepting employment only in her own type of work, within the limits of a small community, where such employment seemed to be unobtainable, had restricted her sphere of availability to such an extent that she could not be considered as available for work; the provision of the Act relating to the suitability of employment in other than one's usual occupation must apply to all insured persons.

The material facts of the case are as follows:

The claimant, a married woman aged 24 years, had been employed as an office clerk by a large department store and left this employment on April 4, 1947 for domestic reasons. She later moved to a town having a population of approximately 1,500 and on October 20, 1947 made a postal claim for benefit, which was allowed. On April 29, 1948, she refused to apply for employment as a sales clerk in a grocery store in a nearby town and stated that she would not accept work away from home. The insurance officer disqualified her on the ground that she was not available for work and the court of referees unanimously reversed this decision. She refused on May 26 to apply for employment as a waitress in a cafe in her home town and was again disqualified, this time for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment, and also on the ground that she was not available for work, the latter disqualification to last for so long as this condition existed. The claimant appealed to a court of referees, which unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

### **DECISION**

The appeal was allowed.

"Decisions CU.-B.256 and 302, along with others, were submitted to the court of referees for their guidance. Apparently, they either overlooked or chose to ignore these decisions, which in my opinion, amply cover the case at issue.

"In decision CU.-B.302, I stated that Section 40(3) of the Act which reads as follows:

"... after a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.'

must necessarily apply to all insured persons, including those who follow a highly skilled occupation; otherwise, the mass of workers who contribute to the fund would be greatly prejudiced. The court of referees, which found that the employment in a coffee shop was 'not suitable for a girl of (claimant's) experience in office procedure and the handling of office work', evidently did not take into consideration that principle. It is to be noted that when the claimant was notified of employment as a waitress, she had already been in receipt of 182 days' benefit and that immediately prior to filing her claim, on October 20, she had been out of the labour field for approximately seven months.

"The following is an extract from case CU.-B.256, the facts of which are analogous to the present one:

"The claimant (having been unemployed for a period of approximately eight months) was offered employment in C..... at about 30 miles from her residence, which she refused to accept on account of domestic circumstances. Her husband works in F..... and she does not wish to leave the village. Although the claimant's refusal to leave F....., in view of her domestic circumstances, was quite understandable, it must be borne in mind that when a married woman claims benefit under the Unemployment Insurance Act, she must show that she is capable of and available for work, genuinely seeking but unable to find suitable employment. It is evident that in insisting to accept work only within the limit of an area where there is none obtainable, the claimant has restricted her sphere of availability to such an extent that she cannot be deemed to be available for work within the meaning of the Act and that she has, in fact, withdrawn herself from the labour field on account of her domestic circumstances."

In this case, the claimant, by insisting to accept employment only in her own line of work, within the limit of [her home town], where there seems to be none obtainable, has similarly restricted her sphere of availability to such an extent that she cannot be considered as available for work within the meaning of the Act.

"Despite the fact that in decision CU.-B.244 I stated:

"It is desirable for and essential to the proper functioning of the Act that decisions of the Umpire should be followed by courts of referees when applicable and I hope that having made this reference to the matter there will be no further occasion for me to do so",

the court of referees seems, in this instance, to have disregarded this caution.

"For these reasons the appeal is allowed and the disqualifications previously imposed by the insurance officer are reinstated, as from the date that this decision is communicated to the claimant."

#### **Case No. CUB-408. (8 November, 1948)**

**Held:** That a claimant, incapacitated by an impediment in his speech and retarded mental development, was nevertheless capable of, and available for work, since his record of employment showed that he had held employment under such a handicap for several years.

The material facts of the case are as follows:

The claimant, a single man aged 47 years, had been employed for four years as a labourer in a flax processing plant located in a village, and was laid off when the factory closed for the season. He made claim for benefit on May 4, 1948, which was allowed. A month later the local office notified him of steady employment at the prevailing rate of pay as a labourer with a firm of building contractors in a city located approximately 30 miles from his place of residence. He refused to apply for the employment on the grounds that he could not accept work away from home because he had to look after his aged mother, and that he could not speak English and would not be able to understand the foreman. The insurance officer disqualified him for a period of three weeks because he had without good cause refused to apply for a situation in suitable employment.

The claimant appealed to a court of referees, submitting, in addition to the reasons already given for refusing to apply for the position, that he had an impediment in his speech and because of this it was difficult to make himself understood. The local office indicated that there was work available for labourers in the vicinity of the claimant's home. The claimant, as well as his brother, appeared before the court. It was apparent that he was mentally deficient and the court reversed the decision of the insurance officer with regard to the disqualification for refusing to apply for suitable employment, but disqualified him on the ground that he was not capable of and available for work, the disqualification to commence on June 4, the day following the last day for which he received benefit, and to last for so long as the condition existed.

The insurance officer appealed to the Umpire, submitting that the court was right in rescinding the disqualification for refusing to apply for suitable employment, but that it erred in imposing a disqualification on the ground that he was not capable of and available for work.

## DECISION

The appeal was allowed.

"I am asked to decide whether the claimant is capable of and available for work within the meaning or Section 27(1)(b) of the Act.

"Although the claimant might not be 'very well developed mentally', his record of employment, which appears on file and dates back to 1942, shows that he has worked as a labourer, under such handicap, for several years. In fact, the court of referees found that he was able to undertake work of the 'simplest kind'.

"A report of the local office, dated June 25th, 1948, shows that there is work obtainable, in C....., commensurate with the claimant's ability.

"Under the circumstances and in keeping with principles already established in previous decisions, I find that the claimant is capable of and available for work within the meaning of Section 27(1)(b) of the Act."

## Case No. CUB-409. (8 November, 1948)

**Held:** That a claimant who deliberately failed to exercise his right to make a claim for benefit because he expected, at an early date, either to resume work

**with or to obtain new employment from his former employer, has not shown good cause for delay in making a claim for benefit and is not entitled to have his claim antedated.**

The material facts of the case are as follows:

The claimant had been employed as a steamfitter by the Dominion Government from February 9, 1948 to March 31, 1948. He made claim for benefit on May 13, 1948, stating that he had been laid off until more money was voted but up to that time it had not been voted. He requested antedating of his claim to April 1, 1948 and, when the insurance officer did not approve his request for antedating, he appealed to a court of referees on two grounds, first, that he was expecting to be recalled to his former employment, and second, that he had applied for another situation with the same employer but in another department, but the position was given to another person. The court unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The evidence indicates that the claimant deliberately failed to exercise his rights under the Act. He delayed in filing his claim for benefit for the obvious reason that he expected, at an early date, either to resume work with or to obtain new employment from his former employer. Apparently, he felt that there would be little advantage in filing a claim for benefit for what appeared to be a short period of unemployment.

"Under the circumstances, the claimant has not 'shown good cause for delay in making his claim for benefit' within the meaning of Section 36(6) of the Act which reads as follows:

"Where an insured person shows good cause for delay in making a claim for benefit the Commission may authorize

- (i) the commencement of a benefit year on a day earlier than that specified in subsection one of this section, and
- (ii) in respect of a period of unemployment, a day of commencement earlier than the day he makes his claim for benefit.'

"The decision of the court of referees is, therefore, reversed and the appeal of the insurance officer is allowed."

## Case No. CUB-410. (8 November, 1948)

**Held:** That a salesman who sells goods which are the product of his employer's competitor, without the knowledge and consent of his employer, is guilty of misconduct.

The material facts of the case are as follows:

The claimant had been employed as a deliveryman for a baker who sold wrapped bread to his numerous customers at a summer resort in the summer and unwrapped bread during the winter to those few customers who remained. Several of the customers preferred to have

wrapped bread the whole year round and the claimant purchased it from another bakery and resold it to his employer's customers, at a profit of one cent a loaf. He stated when making claim for benefit that he had turned in this profit to his employer's wife, which she denied. The employer reported that he had been discharged for cause on account of dishonesty and inefficiency. The insurance officer disqualified the claimant for a period of six weeks on the ground that he had lost his employment by reason of his own misconduct, and the court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"The claimant admits that the sale of bread, purchased from another bakery, was done without the consent or knowledge of his employer. He should have realized, that in selling the product of a competitor in trade, he was promoting the interest of that competitor to the detriment of his employer which, needless to say, is against all business ethics. In fact, the employer discharged him as soon as he found out that he was making such sales.

"For these reasons, the decisions of the court of referees is reversed and the appeal of the insurance officer is allowed.

"The disqualification of six weeks, under Section 41(1) of the Act, imposed by the insurance officer and lifted by the court of referees, is reinstated as from the date that this decision is communicated to the claimant."

## Case No. CUB-411. (8 November, 1948)

**Held:** That a married woman, unemployed for five months, who refused to accept work away from her home town at a time when no work was obtainable there, was not available for work, even though seasonal work in the canning industry was obtainable during the canning season.

The material facts of the case are as follows:

The claimant, a married woman, had been employed as a timekeeper at a food processing plant at a wage of 60 cents an hour from August 1946 to January 1948, when she left her employment because she was needed at home. She made claim for benefit on May 26, 1948, which was allowed. On June 16, 1948 she was notified of employment as a factory worker in a city located approximately 155 miles from the town where she resided, the rate of pay commencing at 49 cents an hour and increasing within a period of four weeks to 70 or 75 cents an hour, the prevailing rate of pay being from 45 to 50 cents an hour. She refused to apply for the situation, claiming that she could not leave her husband and her home to accept work out of town. The local office reported that there were no prospects of employment nearby except with her former employer, which would be seasonal work only, and not available until the following August. The insurance officer disqualified her on the ground that she had without good cause refused to apply for a situation in suitable employment, for a period of six weeks, and on the ground that she was not available for

work, for so long as the condition existed. The claimant appeared before the court of referees, which unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

### DECISION

The Umpire reinstated the disqualification imposed by the insurance officer on the ground that the claimant was not available for work.

"The court unanimously found that the employment notified to the claimant was not suitable on the premise that she was not qualified for the work. This is neither refuted nor, in fact, referred to by the insurance officer in his appeal to me. Consequently, I do not feel justified in disturbing the decision of the court in this respect.

"As to her availability for work, the claimant indicated, in her statement of June 10, 1948, that, on account of domestic circumstances, she could not accept employment out of W . . . , where, according to the submissions, there was no actual prospect of work for her. The evidence further reveals that it was also on account of her domestic circumstances that, on January 9, 1948, she voluntarily left her employment and withdrew from the labour field for a period of five months.

"It must be borne in mind that if a married woman wishes to remain in the labour field, she must adjust her domestic circumstances accordingly. Like any other insured person, who is claiming unemployment insurance benefit, she must prove that she is available for work within the meaning of the Act.

"In this instance, by insisting to accept work only in her home town where there was, at that time, no prospect of employment for her, the claimant had restricted her sphere of availability to such an extent that she could not, then, be considered as available for work within the meaning of the Act.

"Under the circumstances, the indefinite period of disqualification, previously imposed under Section 27(1)(b) by the insurance officer and lifted by the court of referees, is reinstated as from the date that this decision is communicated to the claimant."

### Case No. CUB-412. (7 December, 1948)

**Held:** (1) That certain incidents which preceded a stoppage of work, namely—the issuing of a notice by the union to the effect that it desired certain changes in the collective bargaining agreement, the appointment of a Conciliation Officer and Board, the insistence by the union upon acceptance of, and the refusal by the employer to accept, the minority report of the Conciliation Board, the taking of a strike vote under Provincial Government supervision, and the notifying of the employer by the union that a strike would be sanctioned—are obvious indications that a labour dispute existed and that the stoppage was caused by the labour dispute. (2) That the claimant was directly interested in the labour dispute because her wages and conditions of work would be affected by the proposed change in the collective bargaining agreement.

The material facts of the case are as follows:

The claimant was employed as a waitress in a cafeteria operated by a mining company and was a member of the union which was the sole

bargaining agent for all employees of the company with the exception of those classified as administrative, supervisory, confidential, executive, clerical and watchmen.

In November 1947 the union notified the company that it desired certain changes in the agreement which would expire on December 6, 1947. Negotiations were conducted between the company and the union officials from then until March 1948, when a Conciliation Officer was appointed by the Labour Relations Board at the request of the union. This was followed by the appointment of a Conciliation Board, in April 1948. On May 14, 1948, the Conciliation Board, in a majority award, recommended a wage increase of \$1.00 a day, effective on the day of the signing of a new collective bargaining agreement. The minority report concurred in the recommendation for a wage increase of \$1.00 a day but recommended that the increase be made retroactive to December 6, 1947. On June 26, 1948, the company advised the union of its readiness to abide by the majority award but the union signified its willingness to negotiate a new agreement only in accordance with the recommendation of the minority, and stated that if this proposal were not accepted a strike vote would be taken. The company refused to accept these terms and on July 12, 1948, provincial government officials supervised a vote, as a result of which the company was notified that a strike would take place on July 19, 1948. The company considered that negotiations for an amicable settlement had fallen through and closed the mine on July 16, 1948, discharging the miners but not the claimant, whose services were retained until July 21, 1948.

The claimant made claim for benefit on July 30, 1948, and was disqualified on the ground that she had lost her employment by reason of a stoppage of work due to a labour dispute, the disqualification to last for so long as the stoppage of work continued. The court of referees, before which the claimant was represented by three union officials, unanimously reversed the decision of the insurance officer, being of the opinion that there was no evidence to disprove the union's contentions:

- "(1) That the stoppage of work was purely a closing down for economic reasons.
- "(2) That if claimant had lost her employment through a labour dispute (strike or lockout) she would be entitled to: (a) strike benefits (b) prompt reinstatement when work was resumed.
- "(3) That a popular strike vote did not legally decide that a strike would actually take place on the date named or any date.
- "(4) If in fact a strike or lockout condition prevailed, the company would have continued to maintain such essential services as bunk houses, dining room and power supply; and that the union would have picketed the plant."

The court was of the opinion that the claimant was discharged because the employer was closing down the mine.

A letter was received from the employer after the hearing, stating that the company's action in closing the mine was a direct result of the statement made by the union that a strike would take place on July 19, 1948 unless the demands of the union were met. It stated further that an effort had been made by the company after the closing of the mine to persuade the union committee to withdraw the demand for retroactive

pay, whereupon the mine would be reopened immediately. The members of the bargaining committee had not only refused this offer but had said that they would do all in their power to prevent the mine from reopening until retroactive pay had been given to them. The company concluded its letter by stating its intention not to reopen the mine until the questions involved in the dispute had been settled satisfactorily.

Following receipt of this information, the case was reheard by the court of referees in the presence of two company officials and three representatives of the union, as well as a representative of the provincial Federation of Labour. The court, in a majority decision, confirmed its previous decision, being of the opinion that the company had closed down the plant before negotiations for settlement of the dispute had terminated in a strike, and that it was the duty of the company to await strike developments, if any.

The insurance officer appealed to the Umpire and an oral hearing was granted, which was attended by a representative of the union and by the Chief Claims Officer of the Unemployment Insurance Commission.

## DECISION

The appeal was allowed.

"The question for me to decide is whether or not the claimant lost her employment by reason of a stoppage of work due to a labour dispute. It is not contended that the claimant does not come within the provisions of the collective bargaining agreement between the company and the union.

"A labour dispute is defined in the Act as follows:

"‘‘Labour dispute’’, means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not.’ (Section 2(1) (d))

"According to the submissions, there does not seem to be any doubt in the mind of the interested parties that a labour dispute existed at the ..... Mines Ltd., prior to July 16, 1948. In fact, the incidents which preceded the cessation of work, viz, the issuance of notices accompanied by proposals for the modification of conditions of employment, the negotiations which were followed by the appointment of a conciliation officer and subsequently by the appointment of a conciliation board, the insistence by the union of the acceptance of the minority award of that Conciliation Board, ‘the persistent refusal of the company to make the increase retroactive’, the strike vote taken under the Provincial Government supervision, the notification given to the company by the local union, on July 14, that it ‘had advised that a strike be sanctioned by July 19’, are obvious indications that a labour dispute existed at the ..... Mines Ltd., within the meaning of Section 2(1) (d) of the Act, when the company closed down the mine on July 16, 1948.

"It was contended, however, by the interested union that all these incidents, which are the characteristics of a labour dispute, do not bear direct relationship to the closing of the mine, but that the economic

situation was responsible for it, the labour dispute being only coincidental thereto. [The union representative] stated at the hearing that 'whatever labour dispute existed prior to July 16, terminated immediately on that date, and that any relationship between the company and its former employees ceased . . . , and 'the fact that other mines were closing for economic reasons . . . indicates that the pre-existing labour dispute was only a pretext for the cessation of mining operations.'

"On the evidence before me, I consider that the various incidents which occurred at the ..... Mines Ltd. from November, 1947 on, including the stoppage of work which took place on July 16, 1948, bore direct relationship. Although the prevailing economic situation might have some bearing on the case, the primary cause of the closing down of the mine on July 16, 1948, was the labour dispute. It may be reasonably assumed that, as stated by the Chief Claims Officer, at the hearing 'the mine would not have been closed down in July if the union had accepted the majority award of the Conciliation Board'. This is substantiated by the company's acceptance of the majority award and the union's insistence in demanding that the increase in wages be retroactive. Furthermore, it is indicated that on July 21, five days after the stoppage of work took place, the Managing Director of the Company and the union's executive met at the mine and discussed matters. It is also shown that the claimant, who had been kept in the employ of the company, after the closing of the mine, in her occupation as a waitress, was discharged when the union 'called out' all their cooks. It is, therefore, apparent that in the mind of the union officials there was, at that time, a stoppage of work at the mine, due to a labour dispute.

"My decision, therefore, is that the claimant lost her employment by reason of a stoppage of work due to a labour dispute at the ..... Mines Ltd. As her conditions of work stood to be affected by the proposed collective bargaining agreement, she was directly interested in that dispute and was, therefore, rightly disqualified by the insurance officer in the first instance, under Section 39(1) of the Act.

"It has been suggested by the Chief Claims Officer that I give some guidance as to 'the way in which we are to decide whether or not the stoppage of work is deemed to be still existing' or if it can be assumed that at some date 'there was a definite abandonment of the project for economic or other reason'. As indicated by [the union representative], at the hearing, other gold mines have closed or are in the process of closing in the Province of British Columbia, due to economic conditions. It may, therefore, be found that the stoppage of work, within the meaning of the Act, has ceased at the ..... Mines Ltd. and that the mine is closed permanently. This, moreover, is entirely a question of fact which should be determined by the insurance officer after having communicated with the interested parties and investigated the prevailing circumstances.

"The appeal is allowed."

#### **Case No. CUB-413. (7 December, 1948)**

**Held:** That an outside construction worker who is paid on an hourly basis is unemployed on a day when, because of inclement weather, no work or consequent remuneration is available.

The material facts of the case are as follows:

The claimant, a construction labourer, made claim for benefit on May 27, 1948, and stated that he was unable to work on that day and the previous day because of rainy weather. The employer confirmed the fact that the claimant had been idle on the 26th and 27th of May and said that he had worked again from the 28th until June 3. The insurance officer disqualified the claimant as from May 27, 1948 on the ground that he was not unemployed on the day on which he made claim for benefit, the disqualification to last for so long as the condition existed. On appeal to a court of referees, the claimant stated that he had travelled a distance of 1½ miles to work every day and that he considered himself entitled to benefit for any day on which the employer was not able to give him work due to weather conditions. The court unanimously upheld the decision of the insurance officer, being of the opinion that wet weather is an occupational hazard of outside construction work.

The chairman granted the claimant leave to appeal to the Umpire.

## DECISION

The appeal was allowed.

"The Chief Claims Officer of the Unemployment Insurance Commission submitted a statement to the Umpire, under date of November 2, 1948, which reads in part:

"The question before you is whether or not on the 27th of May, the day on which he filed his claim, the claimant was unemployed. According to the evidence the claimant worked on the 25th of May, was unemployed on the 26th and 27th of May and employed from the 28th to the 3rd of June. The reason for the two "unemployed" days was bad weather but it is interesting to note that even then on both these days he reported for work, a distance of one mile and a half from his home, and was told by his employer, on both occasions, that there would be no work for him. On the 27th he therefore reported to the Commission's local office, registered for employment and filed a renewal claim. We are not interested in the 26th of May as that date is prior to the date he made his claim and has not been claimed for.

"The word "unemployed" is not defined in the Act and has therefore, to be given its natural and ordinary meaning. The general rule is that a claimant who makes claim for benefit is not "unemployed" if he is following an occupation from which he derives remuneration.

"As this claimant is an hourly paid employee, he cannot be said to have received remuneration for the days for which he reported for work but for which he was not paid owing to the inclement weather.

"In a British decision, case No. 13129/34, the Umpire stated:

"... a claimant must be deemed to be employed on any day on which (i) he has reached the point at which he is expected to work and had actually commenced work or had the opportunity for commencing work; or (ii) whether or not he

has reached that point or commenced work or had the opportunity for so doing, he is entitled to receive wages in respect of that day."

"To hold that this claimant was employed for the day in question would be manifestly unfair considering that in many larger industries than that of the construction trade we have allowed benefit whenever there has been a lay-off caused by floods, lack of material, retooling, breakdown of machinery and acts of God. The question of whether or not the 27th of May should be a compensable day under Subsection 35(1)(b) is a matter which is beside the issue to be decided in this case.

"I would submit that the decision of the insurance officer, as upheld by a court of referees, was in error as the claimant did in fact fulfil all the requirements of Subsection 27(1) and it is contended that his appeal should be allowed."

"The interpretation of Section 27(1)(a) of the Act as applied to the present case by the Chief Claims Officer, in the light of British Jurisprudence, seems a reasonable one.

"I consider, therefore, that the claimant was unemployed on the day he filed his claim for benefit and the appeal in that connection is allowed."

#### **Case No. CUB-414. (8 December, 1948)**

**Held:** That allegations of nervous disability which would make the acceptance of otherwise suitable employment inadvisable must be substantiated by satisfactory evidence.

The material facts of the case are as follows:

The claimant was employed as a wool winder from November 26, 1945 to September 19, 1947, and her rate of pay upon separation was \$22.50 a week. On November 8, 1947, she made claim for benefit and registered as a cashier, with a secondary occupation as a wool winder. She refused on June 28, 1948 to apply for employment as a sewing machine operator (trainee) at a wage of 40 cents an hour, this to be changed to a piece-work basis later, her reason for refusing being that she had tried this type of work before and found that she was too nervous. The employment was considered suitable in view of the claimant's employment history and her statement that she was unable to do work which required standing, and the insurance officer disqualified her from receipt of benefit for a period of six weeks on the ground that she had without good cause refused to apply for a situation in suitable employment. On appealing to a court of referees, the claimant said that she did not know that she was being offered work but was under the impression that the local office wanted to change her registered occupation. The court, before which she appeared, upheld the decision of the insurance officer by a majority decision.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was dismissed.

"From the facts and submissions before me, I do not find that the claimant has adduced satisfactory evidence that she was unable, on account of health reasons, to perform the work notified to her on June 28th, 1948. The court of referees, after having heard her testimony, found that she had without good cause refused to apply for a situation in suitable employment. I do not see any valid reason to alter that decision.

"The appeal of the claimant is, therefore, dismissed."

#### Case No. CUB-415. (9 December, 1948)

*Held:* That an unmarried woman, aged 22 years, had not shown just cause for voluntarily leaving her employment in alleging that she was unable to secure suitable living accommodation in a city. Her desire to live with her parents and to work in her home town did not provide good cause for refusing to apply for suitable employment in her usual occupation in a city twenty-five miles from her home, the possibility of her obtaining employment in her home town being very remote. Since she desired to work or must work, she had to adjust herself to the requirements of our industrial economy.

The material facts of the case are as follows:

The claimant, a single girl, aged 22 years, worked as a secretary in K . . ., (population 35,657), for nearly three years, her salary on separation being \$115.00 a month. Her parents moved to S . . . (population 1668), in December 1947 and she made arrangements to live with friends in K . . . temporarily but left her employment on February 28, 1948 and went to live with her parents, stating that she was unable to find suitable living accommodation. One week prior to separation, she visited the local office in St. . . . with a view to finding suitable employment in S . . ., but local office records indicate that there had been no secretarial vacancies in that town for two or three years, and that the only type of work available there was domestic or hotel work. She made claim for benefit on March 8 and the insurance officer disqualified her from receipt of benefit for a period of six weeks on the ground that she had voluntarily left her employment without just cause. On March 23, 1948 she was referred to a position as secretary in St. . . ., which is about twenty-five miles from S . . ., at a salary of \$25.00 to \$30.00 a week, for which she refused to apply because she wanted work in S . . . only. The claimant appealed to a court of referees and the insurance officer referred to the court the question as to whether the claimant had neglected to avail herself of an opportunity of suitable employment in St. . . ., and also as to whether she had so restricted her sphere of employment as to be not available for work. The court unanimously reversed the decision of the insurance officer and found that the claimant had shown good cause for refusing to apply for the employment in St. . . . of which she was notified, also that she was available for work within the meaning of the Act.

The insurance officer appealed to the Umpire.

#### DECISION

The appeal was allowed and the claimant was disqualified for a period of six weeks.

"In his submission to me, under date of November 25, 1948, [the insurance officer] states:

"It is submitted that the court erred in the first two decisions. In regard to the voluntary separation from the . . . Co., it is more likely that the motive was attributable to the parents, (see Exhibit 2A), than to the alleged inability to procure suitable accommodation in K . . ., which has a population of some 35,657 persons. The jurisprudence laid down in CUB-B's 194 and 339 appear to cover this point. With respect to the refusal to apply for suitable employment, I submit that CUB-243 and other decisions afforded adequate guidance to the court."

"According to the evidence, the claimant's main reason for having voluntarily left her employment was to live with her parents who now reside in S . . ., which is approximately 50 miles from K . . . Although she contacted the St. . . . local office, previous to her voluntary leaving, in order to ascertain whether employment could be found for her in S . . ., there is no indication that she was ever given assurance of work in that locality.

"In refusing to accept the employment notified to her in St . . . in her own line of work and at the prevailing rate of pay in the district, she again indicated her unwillingness to accept any employment away from her parents' place of residence. St. . . . is approximately 25 miles from S . . ., and according to the submissions her prospects of obtaining employment in S . . . are remote.

"The facts indicate that the claimant is over 22 years of age. If she desires to or must work, she has to adjust herself to the requirements of our industrial economy. Her eagerness to live with her parents is understandable, but as an insured person under the Unemployment Insurance Act she must, in order to qualify for the receipt of benefit, fulfil the requirements of the Act.

"For these reasons, the appeal of the insurance officer is allowed and the claimant is disqualified from the receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

#### **Case No. CUB-417. (9 December, 1948)**

**Held:** That a claimant laid off because of a cancellation of orders due to a strike threat should be disqualified as from the day on which the stoppage of work actually commenced, such disqualification to last for the duration of the stoppage of work caused by the labour dispute; the claimant is entitled to benefit from the day he was laid off until the general stoppage of work occurred.

The material facts of the case are as follows:

The claimant was employed as a lathe operator by a manufacturer of tools. The union of which he was a member intimated to the employer on January 18, 1948 that a strike would be called on January 31, 1948, if a settlement had not been reached by that date with regard to the terms of renewal of the collective bargaining agreement. This resulted in a cancellation of orders and the claimant and one other employee were laid off on January 23, 1948, because of a consequent shortage of work. He made claim for benefit on January 24, which was allowed, but he was

disqualified as from February 2, 1948, the date on which the strike caused a stoppage of work, on the ground that he had lost his employment by reason of a stoppage of work due to a labour dispute, the disqualification to last for so long as the stoppage of work continued. This decision was confirmed by a majority of the court of referees.

The claimant appealed to the Umpire, submitting that he understood he would not have been called back to work even if the strike had been averted, as there was a shortage of work due to cancellation of orders. He also submitted that the employer had since re-opened and had not yet sent for him.

## DECISION

The appeal was dismissed.

"According to the submissions, at the time the claimant was laid off from . . ., a labour dispute was in progress at that plant, which labour dispute, a few days later, culminated in an anticipated stoppage of work.

"The claimant contends that he should not have been disqualified from the receipt of benefit, under Section 39 of the Act, because he was laid off prior to the stoppage of work and because 'he would not have been called back to work even if [the] strike had been averted'.

"In cases of this nature, the intent of both parties, the employer and the employee, must be carefully scrutinized.

"The employer and the claimant have stated that the lay-off was on account of a 'cancellation of orders due to a strike threat'.

"Under the circumstances, I consider that the court of referees rightly found that on February 2, 1948, the claimant was unemployed on account of a stoppage of work due to a labour dispute and rightly upheld the decision of the insurance officer who disqualified him from the receipt of benefit for the duration of the stoppage of work at . . . Ltd.

"The appeal is dismissed."

## Case No. CUB-418. (9 December, 1948)

**Held:** That a married woman who refuses employment in her own line of work at reasonable working hours and at the prevailing rate of pay in the district has without good cause refused to apply for a situation in suitable employment.

The material facts of the case are as follows:

The claimant, a married woman, registered for work as a sales-clerk (pastry), with a secondary occupation of soda-fountain clerk, was unemployed and in receipt of benefit for four months when she was referred to employment as a sales-clerk in a pastry shop at a salary of \$20.00 a week, the hours of work being from 9:15 a.m. to 6:30 p.m. for five days, Saturday being a half-day. She refused to apply for the situation because the hours were not suitable and she wished more money. The insurance officer disqualified her for a period of six weeks, on the ground that she had without good cause refused to apply for a situation in suitable employment. On appeal to a court of referees, she

claimed that she could not work later than 5:30 p.m., because she had to take care of her eleven-year-old daughter. The court unanimously reversed the insurance officer's decision.

The insurance officer appealed to the Umpire, submitting that the treatment of a married woman, unless she is the family breadwinner, should be identical with the treatment of a single woman under the administration of the Unemployment Insurance Act.

## DECISION

The appeal was allowed.

"The employment notified to the claimant was employment in her own line of work, at reasonable working hours and at the prevailing rate of pay in the district. Considering the scarcity of 'suitable employment for married [women]' in the claimant's locality, as reported by the Local Office, and the fact that she had been unemployed and in the receipt of benefit for approximately four months at the time of notification of that work I find that the claimant has, without good cause, refused to apply for a situation in suitable employment.

"This finding is in accordance with many decisions rendered in similar cases. The extracts of some of these decisions which are quoted in the insurance officer's appeal to me rightly apply to the present case.

"Under the circumstances, the appeal of the insurance officer is allowed and the claimant is disqualified from the receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

## Case No. CUB-419. (9 December, 1948)

**Held:** That a claimant who refused to apply for employment in her usual occupation at the prevailing rate of pay in the district, because she was taking a commercial course at night and preferred to continue her studies rather than return to this type of work, has refused without good cause to apply for suitable employment.

The material facts of the case are as follows:

The claimant, registered for employment first as an office clerk and secondly as a hand finisher and examiner, was employed in the latter capacity in a cap factory for five years and, when laid off due to shortage of work, was receiving \$21.25 a week. Two months later she was referred to employment in another cap factory, which entailed sewing, at a wage of from 45 to 50 cents an hour. She refused to apply for the position because she was taking a commercial course at night for which she had paid two months' tuition, and preferred to continue her studies rather than return to her former type of work. The insurance officer disqualified her for a period of six weeks on the ground that she had, without good cause, refused to apply for a situation in suitable employment, and a court of referees unanimously reversed this decision.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"On the evidence before me, I consider that the claimant should have accepted the employment notified to her, which was in the line of work to which she was accustomed and at the prevailing rate of pay in the district.

"The claimant's desire to change her occupation to one of her liking and in keeping with her studies, is understandable. She had been unemployed, however, for a period of approximately two months and acceptance of the employment notified to her would not have jeopardized her opportunity of accepting a position as an office clerk, when an offer of that kind presented itself.

"For these reasons, the decision of the court of referees is reversed and the appeal of the insurance officer is allowed. The claimant is disqualified from the receipt of benefit for a period of six weeks as from the date that this decision is communicated to her."

#### **Case No. CUB-420. (10 December, 1948)**

**Held:** That a claimant who, upon separation from employment, receives compensation from his employer for loss of employment in the amount of full salary for one month and half salary for six months, is considered to have continued to receive compensation for loss of employment, but is subject to disqualification under Section 29(1)(a)(ii) of the Act only for the period during which such compensation is equivalent to the remuneration he would have received had his employment not terminated, namely, one month.

The material facts of the case are as follows:

The claimant, aged 72 years, separated from his employment on March 31, 1948, because he found the work too heavy and the hours too long for his age. He made claim for benefit and the employer informed the local office that upon separation he received one month's full salary and six months' half salary. The insurance officer disqualified him on the ground that he was not unemployed within the meaning of the Act, the disqualification to last for so long as the condition existed. The court of referees was of the opinion that the disqualification should be for four months only, inasmuch as one month's full salary and six months' half salary would be the equivalent of four months' salary.

The insurance officer appealed to the Umpire, submitting that the disqualification should have terminated on April 28, 1948, because it did not appear that the amount received in addition to the four weeks' full salary represented compensation for loss of and substantially equivalent to the remuneration he would have received if his employment had not terminated.

#### **DECISION**

The appeal was allowed.

"The present case comes under Section 29(1)(a)(ii) of the Act, which reads as follows:

"'29 (1) An insured person shall be deemed not to be unemployed  
 (a) during any period for which notwithstanding that his employment has terminated, he continues to receive  
 (i) ....

- (ii) compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated.'

"According to the evidence, the claimant, notwithstanding that his employment has terminated, receives monies from his ex-employer as 'a gift', and 'a good-will gesture' in recognition of his past services with the company. It is a compensation for the loss of his employment, to which he had no legal claim under his contract of service.

"Under section 29(1)(a)) (ii), he was subject to disqualification from the receipt of benefit for the month immediately following his separation from work, because, during that given period he continued to receive 'compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated'.

"I agree, however, with the opinion expressed by the dissenting member of the court of referees and that of the insurance officer in his appeal to me that the claimant is not subject to disqualification under that section for the 26 weeks immediately following, because, although he continues to receive a compensation during a given period, that compensation is not 'substantially equivalent to the remuneration he would have received if his employment had not terminated'.

"Under the circumstances, the decision of the court of referees is reversed and the claimant, provided he meets the other requirements of the Act, is disqualified only for the period for which he received compensation equivalent to the remuneration he would have received had his employment not terminated."

#### **Case No. CUB-421. (10 December, 1948)**

**Held:** That seasonal workers, who claim benefit for a period of unemployment, whether it occurs during the on-season or the off-season, must, as all other claimants, fulfil the conditions laid down in the Act. Seasonal workers, however, who claim benefit for a period of unemployment which occurs during the off-season, must, in addition, satisfy the requirements of the Seasonal Regulations.

The material facts of the case are as follows:

The claimant was employed as a freight checker by a firm of shipping agents from April 20, 1948 to April 28, 1948. He was laid off when the work was finished and made claim for benefit on May 10, 1948, applying for extension of the two-year period. This was approved by the insurance officer, a benefit year was established and the claim was allowed. His contribution record showed that out of his most recent 48 contributions prior to the commencement date of his benefit year, more than 12 were seasonal, having been paid in respect of him while engaged as a stevedore in a deep sea port. The claimant therefore was classified as a seasonal worker but, as such, was unable to fulfil the requirements of the Seasonal Regulations. The insurance officer disqualified him for the period of the off-season for deep sea ports as defined by Benefit Regulation, that is, May 16, 1948 to December 14, 1948. The court of referees, before which the claimant appeared, unanimously upheld the decision of the insurance officer.

The chairman granted the claimant leave to appeal to the Umpire.

## DECISION

The appeal was dismissed.

"This case comes under Section 12 of the Benefit Regulations which reads, in part, as follows:

### *Seasonal worker*

"12(1) If more than twelve of the most recent forty-eight contributions required to be recorded under the Act or regulations in respect of the employment of an insured person prior to the commencement day of his benefit year, are seasonal contributions, such person shall for the purposes of this section be a seasonal worker.

### *Entitlement to benefit in off-seasons*

(2) A seasonal worker shall be entitled to receive benefit for days on which he is unemployed in any off-season applicable in his case, only if he fulfils all the other conditions of entitlement to benefit, and if

- (a) not less than four hundred and twenty contributions were recorded pursuant to the Act or regulations in respect of his employment occurring within the two years immediately preceding the commencement day of his benefit year; or
- (b) not less than the respective number of contributions mentioned hereunder opposite the seasonal industry applicable in his case were so recorded for employment occurring in any such off-seasons or parts thereof included in the period of two years immediately preceding the commencement day of his benefit year:

<i>Seasonal Industry</i>	<i>No. of Contributions</i>
--------------------------	-----------------------------

Transportation by water.....	50
------------------------------	----

Stevedoring:

Inland ports.....	50
Deep sea ports.....	85

### *Proviso*

Provided that where, by reason of paragraph (a) or (b) such seasonal worker is not entitled to benefit during any off-season beginning after the commencement day of his benefit year, the period of two years therein mentioned shall thereupon be construed as if it were the period of two years immediately preceding the commencement day of such off-season.'

"The facts indicate that more than twelve of the claimant's most recent 48 contributions, prior to the commencement day of his benefit year, are seasonal contributions. He falls, therefore, within the classification of a seasonal worker as provided for in Sub-section 1 of Section 12 of the Benefit Regulations.

"As a seasonal worker, the claimant has to meet the requirement of either paragraph (a) or of paragraph (b) quoted above.

"Admittedly, he does not fulfil the condition laid down in (a).

"The claimant considers, however, that he meets the condition laid down in (b) because 'the setting up of a benefit year . . . would also make [him] eligible as the 85 days off-season employment would be part of the 180 days'.

"Seasonal workers, who claim benefit for a period of unemployment, whether it occurs during the on-season or the off-season, must, as all other claimants, fulfil the conditions laid down in the Act. Seasonal workers, however, who claim benefit for a period of unemployment which occurs during the off-season, must, *in addition*, satisfy the requirements of the seasonal regulations. This is clearly expressed in sub-section (2) set forth.

"In this case, the claimant filed a claim for benefit on May 10, 1948, during the on-season. As he had only 31 contributions to his credit during the two immediately preceding years, an extension of the two-year period was granted under Section 28(3) of the Act, which permitted him to fulfil the first statutory condition and to establish a benefit year. On May 16, 1948, the off-season, applicable in his case, began and he had then, in addition, to qualify under the seasonal regulations. In order to do so, he was required to have at least the number of contributions specified in either (a) or (b) of Section 12(2) of the Benefit Regulations within the period mentioned therein. As an extension of the two-year period is not permissible under the seasonal regulations, the claimant could not show the required number of contributions although he had been able to establish a benefit year with such an extension under Section 28(3) of the Act. Consequently, he was rightly disqualified from the receipt of benefit, in his case, for the duration of the off-season, namely from May 16, 1948 to December 14, 1948.

"I can quite understand that in the claimant's mind this disqualification might appear unfair. However, I must repeat what I have already stated in previous decisions, that I am bound by the provisions of the Act and the Regulations thereunder and that therefore, I have no authority to override Sub-section (1) or (2) of Section 12 of the Benefit Regulations.

"Under the circumstances, the appeal is dismissed."

#### **Case No. CUB-422. (10 December, 1948)**

**Held:** That a claimant who voluntarily left his employment in anticipation of a lay-off to take another position of which he was not certain, acted too hastily in giving up his employment when there appeared to be no reason for him to anticipate an immediate lay-off and when he had not secured work elsewhere and, therefore, voluntarily left his employment without just cause.

The material facts of the case are as follows:

The claimant was employed as an apprentice carpenter with the same employer for approximately three months and voluntarily left in anticipation of an impending lay-off and in the belief that he could immediately obtain employment as a labourer with either one of two different firms. He had a letter of recommendation and was so sure he would succeed in obtaining a position that he deferred for three weeks the filing of his claim. Unfortunately, his prospects failed to materialize.

He was disqualified by the insurance officer for a period of six weeks on the ground that he had voluntarily left his employment without just cause. A court of referees, before which he appeared, by a majority decision upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

## DECISION

The appeal was dismissed.

"It is apparent from the claimant's testimony before the court of referees that he did not have definite assurance of work with .....

"As to the claimant's contention that he would have been laid off at the S..... Works Inc., the employer, upon a request for information from the local office on that point, merely stated that the group of employees of which the claimant was one might have to be reduced within a month or two.

"In the light of these facts, I find that the claimant acted too hastily in giving up his employment when there appeared to be no reason for him to anticipate an immediate lay-off and when he had not definitely secured work elsewhere.

"The appeal is, therefore, dismissed."

## Case No. CUB-423. (10 December, 1948)

*Held:* That the fact that a claimant is not a union member does not *ipso facto* make him a party without interest in a labour dispute. Moreover it is immaterial whether this interest is adverse or not. Whenever the future working conditions of a claimant stand to be effected by the outcome of a labour dispute, he is directly interested therein within the meaning of Section 39 of the Act. (CUB-85, CUB-127, CUB-191, and CUB-322 referred to.)

The material facts of the case are as follows:

The claimant, a stitcher paid by the hour, was one of a group of claimants who had lost their employment by reason of a stoppage of work which had taken place on July 12, 1948 at the plant at which they were working. She filed a claim for benefit on July 20 and stated that she was not interested in the outcome of the dispute, as she was not a member of the striking union.

It appears that the union, under the terms of an agreement which was due to expire on November 17, 1948, had been recognized as the sole bargaining agent for all employees paid by the hour or by the piece (except those classified as executive or administrative, as well as the permanent guards and firemen) in matters related to wages, hours and conditions of work. It also appears that the disagreement was referred to a Conciliation Board by the Provincial Department of Labour in December 1947 and in January 1948 and that the Board failed to reach an accord, thus leading to the stoppage of work because of the different interpretations placed by the union and the employer respectively on the application of certain clauses of the bargaining agreement dealing with union security, check-off, procedure in cases of grievances, etc. An additional condition upon which the union would have agreed to the employees returning to work was that an amendment be made to the existing agreement which would provide for a "closed shop".

The insurance officer disqualified all the claimants covered by the bargaining agreement as being directly interested in the labour dispute, irrespective of their membership in the union, but the court of referees decided to allow benefit to those who did not belong to the union.

The insurance officer appealed to the Umpire.

## DECISION

The appeal was allowed.

"It is established that the claimant lost her employment on account of a stoppage of work due to a labour dispute. Consequently, the case has to be determined in accordance with Section 39 of the Act.

"Under Section 39 of the Act, the claimant in order to qualify for the receipt of benefit, had the onus of proving that she satisfied each of the six following requirements: That she was not—

1. participating in
2. or financing
3. or directly interested

in the labour dispute which caused the stoppage of work and that she did not belong to a grade or class of workers of which immediately before the commencement of the stoppage of work there were members employed at the premises at which the stoppage was taking place, any of whom are—

4. participating in
5. financing
6. or directly interested in the dispute.

"The insurance officer in his appeal to me contends that the court of referees erred in finding that the claimant had satisfied requirement '3' of Section 39 of the Act, as above quoted.

"According to the submissions the claimant's employment is covered by the bargaining agreement between the union and the company. The application of this agreement insofar as it concerns certain working conditions at the plant (procedure in case of grievances, etc.), is one of the causes of the labour dispute. It is therefore evident that the future working conditions under which the claimant would be employed with the employer stand to be materially affected by the outcome of the labour dispute. For this reason she is, as rightly contended by the insurance officer, directly interested in this dispute which caused the stoppage of work.

"The court of referees' attention is drawn to decision CUB-85, 127, 191 and 322 wherein I stated in substance that the fact that a claimant is not a union member does not, '*ipso facto*', make him a party without interest in a labour dispute. Moreover, it is immaterial whether this interest is adverse or not. Whenever the future working conditions of a claimant stand to be affected by the outcome of a labour dispute, he is directly interested therein within the meaning of Section 39 of the Act.

"The decision of the court of referees is therefore reversed and the appeal of the insurance officer is allowed.

"The claimant is disqualified from the receipt of benefit for the duration of the stoppage of work at the . . . Company Limited. Those associated with her in this appeal, whose employment was also covered by the bargaining agreement are for the same reasons similarly disqualified."

#### **Case No. CUB-424. (10 December, 1948)**

**Held:** That employment to which a claimant is referred is not suitable employment if the wage rate is less than the minimum wage provided for by provincial decree. A claimant is not available for work within the meaning of the Act when she restricts herself to part-time work in her usual occupation, working afternoons only with a certain minimum number of hours of work.

The material facts of the case are as follows:

The claimant, a single girl with family responsibilities, had been employed by the same firm as a salesclerk on afternoons only for approximately eight years at an hourly rate of 40 cents, when she voluntarily left on April 10, 1948, because her working hours had been cut down from thirty to twenty a week. She made a claim for benefit on April 15, 1948, was disqualified for voluntarily leaving and, on June 14, 1948, was referred to full-time work as a salesclerk at \$16 a week. Previous to this, she had expressed her unwillingness to accept any part-time work other than in her usual occupation. She now refused to apply for the situation on the ground that her domestic responsibilities, i.e., looking after her aged father and her sister's three young children, made it possible for her to work afternoons only.

The insurance officer disqualified her for six weeks on the ground that she had, without good cause, refused to apply for a situation in suitable employment and also on the ground that she was not available for work, the latter disqualification to last until she proved availability. She appealed to the court of referees which, by a majority decision, upheld the decision of the insurance officer.

The claimant appealed to the Umpire.

#### **DECISION**

The appeal was allowed insofar as the question of refusing to apply for suitable employment was concerned, but was dismissed insofar as the question of availability was concerned.

"Two questions are placed before me to decide:

"1. Was the employment notified to the claimant suitable employment within the meaning of Section 40(1)(a) of the Act?

"2. Is the claimant available for work within the meaning of Section 21(1)(b) of the Act?

"According to the submissions, the claimant worked for eight years as a sales clerk in a chain store. Although her employment was on a part-time basis, she was considered under Provincial Decree No. 3265, relating to the Retail Trade in the city of Q . . . , as a regular employee because she was working a required minimum of 30 hours a week; furthermore, she is the holder of a card of competency which dates

back to August 22, 1946. The minimum salary laid down by the aforesaid Decree as amended April 22, 1948, for regular 'clerks and office employees' (female) having three years' experience or over, is \$17.50 for the regular or standard working week.

"In the light of these facts, it would seem that the employment notified to the claimant on June 14, 1948, as a sales clerk in a retail store, at \$16 for the standard working week, was not, for the claimant, suitable employment within the meaning of the Act.

"The claimant has restricted her availability for work to part-time employment. Moreover, she is unwilling to take part-time employment other than in her own line of work and this part-time employment must be in the afternoon and not below a certain minimum of working hours so as to provide a 'living wage'. In her appeal to me, the claimant has indicated that she has not yet found such employment.

"Under the circumstances, I find that the claimant has so reduced her sphere of employment that she cannot be considered as available for work within the meaning of the Act.

"The disqualification of six weeks under Section 40(1) (a) is therefore lifted but the claimant is to remain disqualified for an indefinite period under Section 27(1) (b) of the Act."

#### **Case No. CUB-425. (12 February, 1949)**

**Held:** That alleged transportation difficulties do not furnish just cause for voluntarily leaving suitable employment when the claimant lives in a town which is regarded as part of an industrial area, and reasonable means of transportation are available.

The material facts of the case are as follows:

The claimant was employed in the large city of T . . . , her working hours being 8.30 a.m. to 5 p.m. For three weeks after moving to the adjacent town of I . . . she was able to obtain private transportation to and from work, and in order to do this she received permission to change her working hours, to commence at 7.30 a.m. and to leave at 4 p.m. When this arrangement was discontinued, she left her employment (which was located 9 miles from her residence) because, she claimed, her health was being ruined by travelling 1½ hours by bus, in addition to 15 minutes' walk, each way. She was disqualified by the insurance officer for a period of six weeks on the ground that she had voluntarily left her employment without just cause. The claimant appealed to a court of referees and submitted that, in order to reach her work at 8.30 a.m., she would have to leave her home at 6.30 to travel on the 6.45 bus. The court, before which she appeared, unanimously reversed the decision of the insurance officer.

The insurance officer appealed to the Umpire.

#### **DECISION**

The appeal was allowed.

"When the claimant filed her claim for benefit, she gave as reasons for having voluntarily left her employment that travelling to and from

her place of work was 'ruining her health' and that 'bus connections were very difficult'. From her later statement, dated June 2, 1948, it seems however that the question of her health 'had nothing to do with her reason for leaving her position at all'.

"The court of referees unanimously decided that the claimant, on account of her transportation difficulties, had shown just cause for having voluntarily left her employment, within the meaning of Section 40(1) of the Act. I do not agree with this finding of the court of referees

"I . . . , where the claimant now resides, is regarded as part of greater T . . . , being approximately nine miles from the heart of the city. It is not uncommon for people residing in I . . . to work in T . . . , and it is indicated that there are reasonable means of transportation between those two points.

"As a matter of illustration, I wish to point out that, under the same circumstances, the claimant would not have been entitled under the Act to decline as unsuitable her work with C . . . Press, had it been offered to her while unemployed.

"For these reasons and in accordance with principles already laid down in similar cases, the decision of the court of referees is reversed and the appeal of the insurance officer is allowed. The claimant is disqualified for a period of six weeks, as from the date that this decision is communicated to her".



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### **PART III**

**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AND REGULATIONS APPLICABLE TO THE  
SELECTED DECISIONS**

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**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AND REGULATIONS**

**COVERAGE**

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**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AND OF THE FIRST SCHEDULE THERETO, REFERRED TO  
IN DECISIONS CUC-1 to CUC-4**

***"Insured persons"* defined**

13. (1) Subject to the provisions of this Act, all persons who are employed in any of the employments specified in Part I of the First Schedule to this Act, not being employment specified as excepted employments in Part II of that Schedule shall be insured against unemployment in manner provided by this Act.

(2) The employment in which any such person is employed shall in this Act be referred to as "insurable employment".

(3) Any person employed in insurable employment shall in this Act be referred to as an "employed person".

(4) Any such person who is insured under this Act shall be referred to as an "insured person".

***Employment within the meaning of Part II of the Act***

***First Schedule, Part I—***

(a) Employment in Canada under any contract of service or apprenticeship, written or oral, whether expressed or implied, or whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise.

(b) Employment, as aforesaid, under:—

- (i) the Government of Canada;
- (ii) the Government of any Province, with the concurrence of the Province; or
- (iii) any municipal or other public authority;

other than any such employment as may be excluded by special order of the Commission.

***Excepted employments***

***First Schedule, Part II—***

(l) Employment—

- (i) in the public service of Canada under the provisions of *Civil Service Act*; or
- (ii) in the public service of Canada or of a province or by a municipal authority, upon certification satisfactory to the Commission that the employment is, having regard to the normal practice of the employment, permanent in character.

(n) Employment at a rate of remuneration exceeding in value two thousand dollars a year or in cases where employment involves part

time service only, at a rate of remuneration which, in the opinion of the Commission, is equivalent to a rate of remuneration exceeding two thousand dollars a year for full time service.

Provided that any person in respect of whom contributions have been paid as an insured person for two hundred and sixty weeks may continue as an insured person notwithstanding anything in this paragraph contained.

**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AND OF THE FIRST SCHEDULE THERETO, AS AMENDED  
BY 7 GEO. VI, CHAP. 31, 1943, REFERRED TO IN  
DECISIONS CUC-6 and CUC-7**

***“Insured persons” defined***

13. (1) Subject to the provisions of this Act, all persons who are employed in any of the employments specified in Part I of the First Schedule to this Act, not being employment specified as excepted employments in Part II of that Schedule shall be insured against unemployment in manner provided by this Act.

(2) The employment in which any such person is employed shall in this Act be referred to as “insurable employment”.

(3) Any person employed in insurable employment shall in this Act be referred to as an “employed person”.

(4) Any such person who is insured under this Act shall be referred to as an “insured person”.

***Employment within the meaning of Part II of the Act***

***First Schedule, Part I—***

(a) Employment in Canada under any contract of service or apprenticeship, written or oral, whether expressed or implied, or whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise.

***Excepted employments***

***First Schedule, Part II—***

(f) Employment in domestic service, except where the employed person is employed in a club or in any trade or business carried on for the purpose of gain.

(h) Employment as a professional nurse for the sick or as a probationer undergoing training for employment as such nurse.

**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AND OF THE FIRST SCHEDULE THERETO, AS AMENDED  
BY 10 GEO. VI, CHAP. 68, 1946, REFERRED TO IN  
DECISIONS CUC-10 TO CUC-13**

***"Insured persons" defined***

13. (1) Subject to the provisions of this Act, all persons who are employed in any of the employments specified in Part I of the First Schedule to this Act, not being employment specified as excepted employments in Part II of that Schedule shall be insured against unemployment in manner provided by this Act.

(2) The employment in which any such person is employed shall in this Act be referred to as "insurable employment".

(3) Any person employed in insurable employment shall in this Act be referred to as an "employed person".

(4) Any such person who is insured under this Act shall be referred to as an "insured person".

***Extension of the two-year period***

28. (3) If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in the first statutory condition,

- (a) incapacitated for work by reason of some specific disease or bodily or mental disablement; or
- (b) employed in excepted employment; or
- (c) engaged in business on his own account; or
- (d) employed in insurable employment in respect of which contributions were not payable; or
- (e) employed outside of Canada or partly outside of Canada, in an employment in respect of which contributions were not payable; or
- (f) employed in an employment not described by Part I of the First Schedule to this Act,

the first statutory condition and section thirty-one of this Act shall have effect as if, for the period of two years therein referred to, there were substituted a period of two years increased by such periods of incapacity or of such employment or business engagement but so as not to exceed in any case four years.

31. (1) Except in the cases referred to in subsection two of this section, the daily rate of benefit for a benefit year shall be thirty-four times the average daily contribution paid by the employed person while in employment during the two years immediately preceding the commencement day of the benefit year.

***Employment within the meaning of Part II of the Act***

***First Schedule, Part I—***

(a) Employment in Canada under any contract of service or apprenticeship, written or oral, whether expressed or implied, or whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise.

***Excepted employments***

***First Schedule, Part II—***

(f) Employment in domestic service except where the employed person is employed in a trade or business carried on for the purpose of gain or is employed in a club.

(r) Employment for which no wages or other money payment is made, where the person employed is the child of, or is maintained by the employer.

**COVERAGE REGULATION, 1941 REFERRED TO IN CUC-4**

***Earnings of \$2,000 or less a year***

2. (2) Every employee employed in an employment described in Part I of the First Schedule to the Act and by item (n) of Part II of that schedule but not by any other item in the said Part II shall be included among the classes of persons employed in insurable employment if under the circumstances of his employment—

- (a) at his rate of remuneration his actual earnings for a year may reasonably be expected to be \$2,000 or less; or
- (b) his actual earnings for a year at his rate of remuneration cannot be estimated with any reasonable degree of certainty, and if—
  - (i) having been employed in the same employment at the same rate of remuneration his actual earnings for the immediately preceding year did not exceed \$2,000; or
  - (ii) if he was not so employed, the earnings in the immediately preceding year of persons employed at the same rate of remuneration in the same employment by his employer or at the same rate of remuneration in similar employment by other employers did not ordinarily exceed \$2,000.

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**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AND REGULATIONS**

**BENEFIT**

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**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
REFERRED TO IN DECISIONS CUB-2 TO CUB-11**

**“Labour dispute” defined**

2. (1) In this Act and in any regulation or order made thereunder, unless the context otherwise requires,

- (d) “labour dispute”, means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not;

**Four statutory conditions for receipt of benefit**

28. The receipt of insurance benefit by an insured person shall be subject to the following statutory conditions, namely,—

- (i) that contributions have been paid in respect of him while employed in insurable employment for not less than one hundred and eighty days during the two years immediately preceding the date on which a claim for benefit is made;
- (ii) that he has made application for insurance benefit in the prescribed manner, and proves that he was unemployed on each day on which he claims to have been unemployed;
- (iii) that he is capable of and available for work but unable to obtain suitable employment; and
- (iv) that he proves either that he duly attended, or that he had good cause for not attending, any course of instruction or training approved by the Commission which he may have been directed to attend by the Commission for the purpose of becoming or keeping fit for entry into or return to employment.

**Antedating of claims**

30. For the purposes of the second statutory condition, a period of unemployment shall be deemed to begin on the date on which the insured person makes application for benefit in the prescribed manner: Provided that regulations may be made authorizing some earlier date to be substituted for the date of application where good cause is shown for delay in making application.

**Periods not counted in computing days of unemployment**

33. An insured person shall not be deemed to be unemployed—

- (a) during any period for which notwithstanding that his employment has terminated, he continues to receive remuneration by way of compensation for loss of, and substantially equivalent to the wages he would have received if his employment had not terminated, or
- (b) on any day on which notwithstanding that his employment has terminated he is following an occupation from which he derives

any remuneration or profit, unless that occupation could ordinarily be followed by him in addition to his usual employment and the remuneration or profit received therefrom for that day does not exceed one dollar, or where the remuneration or profit is payable or is earned in respect of a period longer than a day, the remuneration or profit does not on the daily average exceed that amount; or

- (c) on any day which is recognized as a holiday for his grade or class or shift in the occupation or at the factory, workshop or other premises at which he is employed unless otherwise prescribed; or
- (d) on any day of any calendar week during which he works the full working week.

***Disqualification for neglecting  
an opportunity of employment***

43. An insured person shall be disqualified for receiving benefit—

- (b) if on a claim for benefit it is proved by an officer of the Commission that the claimant—
  - (i) after a situation in any employment which is suitable in his case has been notified to him by an employment office or other recognized agency, or by or on behalf of an employer as vacant or about to become vacant, has without good cause refused or failed to apply for such situation, or refused to accept such situation when offered to him, or
  - (ii) has neglected to avail himself of an opportunity of suitable employment, or
  - (iii) has without good cause refused or failed to carry out any written direction given to him by an officer of the employment office with a view to assisting him to find suitable employment (being directions which were reasonable having regard both to the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district in which the claimant resides);

**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AND OF THE THIRD SCHEDULE THERETO, AS AMENDED  
BY 7 GEORGE VI, CHAP. 31, SEPTEMBER 1943,  
REFERRED TO IN DECISIONS CUB-12 TO  
CUB-205, EXCLUDING CUB-198,  
CUB-201 AND CUB-203**

***“Labour Dispute” defined***

2. (1) In this Act and in any regulation or order made thereunder, unless the context otherwise requires,

- (d) “labour dispute”, means any dispute between employers and employees, or between employees and employees, which is con-

nected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not;

#### ***Four statutory conditions for receipt of benefit***

28. The receipt of insurance benefit by an insured person shall be subject to the following statutory conditions, namely,—

- (i) that contributions have been paid in respect of him while employed in insurable employment for not less than one hundred and eighty days during the two years immediately preceding the date on which a claim for benefit is made;
- (ii) that he has made application for insurance benefit in the prescribed manner, and proves that he was unemployed on each day on which he claims to have been unemployed;
- (iii) that he is capable of and available for work but unable to obtain suitable employment; and
- (iv) that he proves either that he duly attended, or that he had good cause for not attending, any course of instruction or training approved by the Commission which he may have been directed to attend by the Commission for the purpose of becoming or keeping fit for entry into or return to employment.

#### ***Extension of two-year period***

29. (2) If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in the first statutory condition, incapacitated for work by reason of some specific disease or bodily or mental disablement, or employed in any excepted employment, or engaged in business on his own account, the first statutory condition and the Third Schedule to this Act shall have effect as if, for the period of two years therein referred to, there were substituted a period of two years increased by such periods of incapacity or of such employment or business engagement but so as not to exceed in any case four years.

#### ***Antedating of claims***

30. For the purposes of the second statutory condition, a period of unemployment shall be deemed to begin on the date on which the insured person makes application for benefit in the prescribed manner: Provided that regulations may be made authorizing some earlier date to be substituted for the date of application where good cause is shown for delay in making application.

#### ***Attending course of instruction***

31. An insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that

- (a) he is attending a course of instruction or training approved by the Commission in his case;

***Referral to vacancies caused by labour disputes,  
and offers of less favourable employment***

31. An insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that

- (b) he has declined
  - (i) an offer of employment arising in consequence of a stoppage of work due to a labour dispute; or
  - (ii) an offer of employment in his usual occupation at wages lower, or on conditions less favourable, than those observed by agreement between employers and employees, or failing any such agreement, than those recognized by good employers; or
  - (iii) an offer of employment of a kind other than employment in his usual occupation at wages lower, or on conditions less favourable, than those which he might reasonably have expected to obtain, having regard to those which he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed:

Provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.

***Right to membership or non-membership in union preserved***

32. Notwithstanding anything contained in this Act no insured person shall be disqualified for receipt of benefit by reason only of his refusal to accept employment if by acceptance thereof he would lose the right—

- (a) to become a member of, or
- (b) to continue to be a member and to observe the lawful rules of, or
- (c) to refrain from becoming a member of any association, organization or union of workers.

***Periods not counted in computing days of unemployment***

33. An insured person shall not be deemed to be unemployed—

- (a) during any period for which notwithstanding that his employment has terminated, he continues to receive remuneration by way of compensation for loss of, and substantially equivalent to the wages he would have received if his employment had not terminated; or
- (b) on any day on which notwithstanding that his employment has terminated he is following an occupation from which he derives any remuneration or profit, unless that occupation could ordin-

arily be followed by him in addition to his usual employment and outside the ordinary working hours of that employment, and the remuneration or profit received therefrom for that day does not exceed one dollar, or where the remuneration or profit is payable or is earned in respect of a period longer than a day, the remuneration or profit does not on the daily average exceed that amount; or

- (c) on any day which is recognized as a holiday for his grade or class or shift in the occupation or at the factory, workshop or other premises at which he is employed unless otherwise prescribed; or
- (d) on any day of any calendar week during which he works the full working week.

#### ***Non-compensable days***

36. An insured person shall not be entitled to receive benefit
- (a) for the first nine days of unemployment which occur in any benefit year, nor
  - (b) for the first day of unemployment in any calendar week,
    - (i) unless the insured person is unemployed for the whole of that week, or
    - (ii) unless the first day of unemployment in that week immediately follows a period of continuous unemployment of not less than one full week;
- and any day of unemployment excluded under the provisions of this paragraph shall be in addition to the days, if any, excluded under paragraph (a) of this section.

#### ***“Benefit year” defined***

40. (1) Subject to the provisions of section thirty-seven of this Act “benefit year” means, in relation to an insured person, the period of twelve months beginning on the date on which on an application for benefit he proves

- (a) that the first statutory condition is fulfilled in his case; and
- (b) except for his first benefit year, that since the commencement of his last benefit year contributions have been paid in respect of him for sixty days;

and every period of twelve months commencing on the date on which that insured person proves the matters aforesaid after his benefit rights in his last preceding benefit year have either lapsed or been exhausted.

37. If an insured person exhausts his benefit rights in any benefit year, that benefit year shall thereupon be deemed to terminate.

#### ***Disqualification for loss of work due to a labour dispute***

43. An insured person shall be disqualified for receiving benefit—
- (a) if he has lost his employment by reason of a stoppage of work, which was due to a labour dispute at the factory, workshop or

other premises at which he was employed, except where he has, during a stoppage of work, become *bona fide* employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation, but this disqualification shall last only so long as the stoppage of work continues, and shall not apply in any case in which the insured person proves

- (i) that he is not participating in, or financing or directly interested in the labour dispute which caused the stoppage of work, and
- (ii) that he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom are participating in or financing or directly interested in the dispute, and where separate branches of work which are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each of those departments shall, for the purposes of this provision, be deemed to be a separate factory or workshop or separate premises, as the case may be;

#### ***Disqualification for neglecting an opportunity of employment***

43. An insured person shall be disqualified for receiving benefit—

- (b) if on a claim for benefit it is proved by an officer of the Commission that the claimant—
  - (i) after a situation in any employment which is suitable in his case has been notified to him by an employment office or other recognized agency, or by or on behalf of an employer as vacant or about to become vacant, has without good cause refused or failed to apply for such situation, or refused to accept such situation when offered to him, or
  - (ii) has neglected to avail himself of an opportunity of suitable employment, or
  - (iii) has without good cause refused or failed to carry out any written direction given to him by an officer of the employment office with a view to assisting him to find suitable employment (being directions which were reasonable having regard both to the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district in which the claimant resides);

#### ***Disqualification for loss of work due to misconduct or to voluntary leaving without just cause***

43. An insured person shall be disqualified for receiving benefit—

- (c) if he has been discharged from his employment by reason of his own misconduct or if he voluntarily leaves his employment without just cause;

***Discharge for union membership  
or for lawful activity in union***

44. An insured person shall not be deemed to have been discharged from his employment by reason of his own misconduct if he is discharged on account of membership in, or of lawful activity connected with, any association, organization or union of workers.

***Disqualification for non-capability and non-availability***

***Period of disqualification under section 43(b) and (c)***

45. Where a claim for benefit by an insured person is disallowed by the court of referees or the umpire, on the ground

- (a) that the third statutory condition is not fulfilled in his case; or
- (b) that he is disqualified for receiving benefit under paragraphs (b) or (c) of section forty-three of this Act,

the court of referees or the umpire shall declare the insured person to be disqualified from receiving benefit for a period not exceeding six weeks beginning from such date as may be determined by the court of referees or the umpire, as the case may be.

***Appeal to the Umpire***

58. Subject to the provisions of section fifty-nine an appeal shall lie to the umpire from any decision of a court of referees as follows:

- (a) at the instance of an insurance officer in any case;
- (b) at the instance of an association of employed persons of which the claimant is a member, in any case;
- (c) at the instance of the claimant
  - (i) without leave in any case in which the decision of the court of referees is not unanimous; and
  - (ii) with leave of the chairman of the court of referees in any case; so, however, that where leave to appeal is not granted when the decision of the court of referees is given, an application for such leave may be made by the claimant in such form, and within such time after the date of the decision, as shall be prescribed, and any application for leave to appeal shall be granted by the chairman if it appears to him that there is a principle of importance involved in the case or any other special circumstances by reason of which leave to appeal ought to be given.

59. For the purposes of paragraph (b) of section fifty-eight, a claimant for benefit shall not, in relation to any appeal be deemed to be a member of any association of employed persons unless he was a member thereof on the last day on which he was employed before the claim which is the subject of the appeal was made, and has continued to be a member thereof until the date when the appeal is made: and the question whether any association is or is not an association of employed persons for the purpose of this section shall be for the decision of the umpire.

***Authority to rescind or amend a decision***

64. An insurance officer, a court of referees or the umpire, on new facts being brought to his or their knowledge, may rescind or amend a decision given in any particular claim for benefit.

***“Dependency” defined***

***Third Schedule***

1. The weekly rate of benefit for the benefit year shall be thirty-four times the average weekly contribution paid by an employed person while in employment during the two years immediately preceding the claim for benefit:

Except that where the employed person is either—

- (i) a man whose wife is being maintained wholly or mainly by him; or
- (ii) a married woman who has a husband dependent on her; or
- (iii) a married person, widow or widower, who maintains wholly or mainly one or more children under the age of 16 years;

the weekly benefit rate shall be forty times the average weekly contribution paid by an employed person during the two years immediately preceding the claim for benefit: and the expression “child” includes any child of the employed person, a stepchild, adopted child, or illegitimate child.

**SECTIONS OF THE UNEMPLOYMENT INSURANCE ACT, 1940  
AS AMENDED BY 10 GEORGE VI, CHAP. 68, OCTOBER  
1946, REFERRED TO IN DECISIONS CUB-198,  
CUB-201, CUB-203 AND CUB-207  
TO CUB-425**

***“Labour dispute” defined***

2. (1) In this Act and in any regulation or order made thereunder, unless the context otherwise requires,

- (d) “labour dispute”, means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not;

***Conditions precedent for receipt of benefit (unemployed,  
capable of and available for work and unable to  
obtain suitable employment)***

27. (1) Every person who, being insured under this Act, proves that he is

- (a) unemployed,

- (b) capable of and available for work, and
- (c) unable to obtain suitable employment,

and in whose case the conditions laid down by this Act are fulfilled, shall, subject to the provisions of this Act, be entitled to receive payments (in this Act referred to as "insurance benefit" or "benefit") at weekly or other prescribed intervals at such rates as are authorized by section thirty-one of this Act, so long as those conditions continue to be fulfilled and so long as he is not disqualified under this Act from the receipt of benefit.

#### ***Four statutory conditions for receipt of benefit***

28. (1) The right of an insured person to receive insurance benefit shall be subject to the following conditions (in this Act referred to as "statutory conditions"), namely:

- (a) that contributions have been paid in respect of him while employed in insurable employment
  - (i) in the case of each benefit year for not less than one hundred and eighty days during the two years immediately preceding the day on which the benefit year commences; and
  - (ii) in the case of each benefit year except his first, for not less than sixty days since the commencement of his immediately preceding benefit year;
- (b) that, of the contributions made in respect of him while employed in insurable employment during the year immediately preceding the day on which the benefit year commences not more than half were made at the lowest rate of contributions specified in the Second Schedule;
- (c) that he has made a claim for benefit in the prescribed manner; and
- (d) that he is at least sixteen years of age.

#### ***Extension of two-year period***

28. (3) If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in the first statutory condition,

- (a) incapacitated for work by reason of some specific disease or bodily or mental disablement; or
- (b) employed in excepted employment; or
- (c) engaged in business on his own account; or
- (d) employed in insurable employment in respect of which contributions were not payable; or
- (e) employed outside of Canada or partly outside of Canada, in an employment in respect of which contributions were not payable; or
- (f) employed in an employment not described by Part I of the First Schedule to this Act,

the first statutory condition and section thirty-one of this Act shall have effect as if, for the period of two years therein referred to, there were substituted a period of two years increased by such periods of

incapacity or of such employment or business engagement but so as not to exceed in any case four years.

31. (1) Except in the cases referred to in subsection two of this section, the daily rate of benefit for a benefit year shall be thirty-four times the average daily contribution paid by the employed person while in employment during the two years immediately preceding the commencement day of the benefit year.

#### ***Periods not counted in computing days of unemployment***

29. (1) An insured person shall be deemed not to be unemployed
- (a) during any period for which notwithstanding that his employment has terminated, he continues to receive
    - (i) remuneration, or
    - (ii) compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated;
  - (b) on any day on which, notwithstanding that his employment has terminated, he is following an occupation from which he derives remuneration or profit unless
    - (i) that occupation could ordinarily be followed by him in addition to, and outside the ordinary working hours of, his usual employment, and
    - (ii) the remuneration or profit received therefrom for that day does not exceed one dollar and fifty cents or, where the remuneration or profit is payable or is earned in respect of a period longer than a day, the daily average of the remuneration or profit does not exceed that amount;
  - (c) on any day that is recognized as a holiday for his grade, class or shift in the occupation or at the factory, workshop or other premises at which he is employed unless otherwise prescribed;
  - (d) on any day of any calendar week during which he works the full working week;
  - (e) on any Sunday; or
  - (f) subject to the provisions of subsection six of section thirty-six, on any day prior to the day on which he makes a claim for benefit.

#### ***Attendance at course of instruction***

29. (2) An insured person shall be deemed not to have failed to prove that he is available for work on any day on which he is or was attending a course of instruction or training that the Commission has directed him to attend.

#### ***“Dependency” defined***

31. (2) Where the employed person is a person with a dependent, that is to say

- (a) a man whose wife is being maintained wholly or mainly by him;  
or
- (b) a married woman who has a husband dependent on her; or

- (c) a person who maintains wholly or mainly one or more children under the age of sixteen years; or
- (d) a person who maintains a self-contained domestic establishment and supports therein a wholly dependent person connected by blood relationship, marriage or adoption;

the daily rate of benefit shall be forty times the average daily contribution paid by the insured person during the two years immediately preceding the initial claim for benefit in the benefit year.

#### ***Non-compensable days***

- 35. (1) An insured person shall not be entitled to benefit
  - (a) for the first nine days of unemployment in any benefit year; nor
  - (b) for the first day of unemployment in any claim week,
    - (i) unless the insured person is unemployed for the whole of that week, or
    - (ii) unless the first day of unemployment in that week immediately follows a period of continuous unemployment of not less than one full week;

and any day of unemployment excluded under this paragraph shall be in addition to the days, if any, excluded under paragraph (a) of this subsection.

#### ***Antedating of claims***

- 36. (6) Where an insured person shows good cause for delay in making a claim for benefit the Commission may authorize
  - (i) the commencement of a benefit year on a day earlier than that specified in subsection one of this section, and
  - (ii) in respect of a period of unemployment, a day of commencement earlier than the day he makes his claim for benefit.
- (1) Subject to subsection two of this section, "benefit year" means, in relation to an insured person who, upon making a claim for benefit, proves that the statutory conditions are fulfilled in his case, a period of twelve months commencing on the day he makes that claim, the day following the last day worked or the day following the last day for which a contribution has been paid as required by this Act, whichever is the latest.
- (2) If an insured person exhausts his benefit rights in a benefit year, that benefit year shall thereupon be deemed to be terminated.

#### ***Authority for making regulations in respect of special classes of persons***

- 38. (1) Where it appears to the Commission that the application of the provisions of this Act in the determination of benefits for classes of persons

- (a) who habitually work for less than a full working week;

- (b) who work for portions of the year only, and who during those portions of the year work wholly or partly in industries which in the opinion of the Commission are seasonal; or
- (c) who by custom of their occupation, trade or industry pursuant to their agreement with an employer are paid, in whole or in part, by the piece or on a basis other than that of time;

would result in anomalies having regard for the benefits of other classes of insured persons, the Commission may make regulations in relation to the said classes of persons

- (i) imposing additional conditions and terms with respect to contributions and the payment thereof and with respect to the receipt of benefit,
- (ii) restricting the amount or period of benefit, and
- (iii) making modifications in the provisions of this Act relating to the determination of claims for benefit,

as may appear necessary to remove or substantially remove the anomalies.

(2) The Commission shall give such public notice as it considers sufficient of its intention to make regulations under this section and shall receive any representations which may be made to it with respect thereto.

- (3) Regulations made under this section may be applicable
  - (a) either generally or in a specified area; and
  - (b) to all classes to which subsection one applies or one or more of them, to a particular class or a portion of a class or to an industry or a portion of an industry.

#### ***Disqualification for loss of work due to a labour dispute***

39. (1) An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory, workshop or other premises at which he was employed unless he has, during the stoppage of work, become *bona fide* employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation; but this disqualification shall last only so long as the stoppage of work continues.

(2) An insured person shall not be disqualified under this section if he proves

- (a) that he is not participating in, or financing or directly interested in the labour dispute which caused the stoppage of work; and
- (b) that he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom are participating in, financing or directly interested in the dispute.

(3) Where separate branches of work which are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each department shall, for the purpose of this section, be deemed to be a separate factory or workshop.

***Disqualification for neglecting  
an opportunity of employment***

40 (1) An insured person shall be disqualified from receiving benefit if he,

- (a) after an officer of the Commission or a recognized agency or an employer has notified him that a situation in suitable employment is vacant or about to become vacant, has without good cause refused or failed to apply for such situation or failed to accept such situation when offered to him;
- (b) has neglected to avail himself of an opportunity of suitable employment;
- (c) has without good cause failed to carry out any written direction given to him by an officer of the Commission with a view to assisting him to find suitable employment (being a direction which was reasonable having regard both to his circumstances and to the usual means of obtaining that employment); or
- (d) has without good cause failed to attend a course of instruction or training that the Commission directed him to attend for the purpose of becoming or keeping fit for entry into or return to employment.

***Unsuitability of employment  
under certain conditions***

40. (2) For the purposes of this section, employment shall be deemed not to be suitable employment for a claimant if it is

- (a) employment arising in consequence of a stoppage of work due to a labour dispute;
- (b) employment in his usual occupation at a lower rate of wages or on conditions less favourable, than those observed by agreement between employers and employees, or failing any such agreement, than those recognized by good employers; or
- (c) employment of a kind other than employment in his usual occupation at a lower rate of wages, or on conditions less favourable, than those which he might reasonably expect to obtain, having regard to those which he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed.

***Referral after reasonable interval to  
employment in other than usual occupation***

40. (3) Notwithstanding paragraph (c) of subsection two of this section after a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.

***Disqualification for loss of work due to misconduct or to voluntary leaving without just cause***

41. (1) An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of his own misconduct or if he voluntarily leaves his employment without just cause.

***Discharge for union membership or for lawful activity in union***

41. (2) An insured person shall be deemed not to have lost his employment by reason of his own misconduct if he has lost his employment on account of membership in, or of lawful activity connected with, any association, organization or union of workers.

***Right to membership or non-membership in union preserved***

43. Notwithstanding anything contained in this Act, no insured person shall be disqualified from receipt of benefit by reason only of his refusal to accept employment if by acceptance thereof he would lose the right

- (a) to become a member of; or
- (b) to continue to be a member and to observe the lawful rules of;  
or
- (c) to refrain from becoming a member of  
any association, organization or union of workers.

***Periods of disqualification under sections 40 and 41***

44. (1) Where an insured person is disqualified from receiving benefit under section forty or section forty-one of this Act, the period of disqualification shall be for such period, not exceeding six weeks, and shall begin on such day, as may be determined by the insurance officer, court of referees or umpire, as the case may be.

***Questions included in references to claims for benefit***

66. (1) In sections fifty-four to sixty-five inclusive, references to claims for benefit shall be construed as including references to questions arising in relation to such claims, and references to action on a claim shall be construed as including references to determining a question in favour of or adversely to a claimant.

**BENEFIT REGULATIONS, 1943 REFERRED TO IN DECISIONS  
CUB-12 to CUB-205**

***Prescribed manner for making application for benefit***

4. (1) An insured person who desires to obtain benefit shall—  
(a) make a claim for benefit in such manner as the Commission may from time to time direct, and

- (b) lodge his insurance book at the local office where he makes his claim, unless it is already there, or unless the Commission dispenses with such lodging in any particular case, and
- (c) furnish such evidence in support of his claim as may be required by the Commission.

***Procedure for supplying  
evidence of unemployment***

6. (1) A claimant shall, as evidence of being unemployed, attend at the local office where he last claimed benefit or with the approval of the Commission at some other local office, on every working day or on such days as the Commission may direct, at such times as the Commission may direct; and, if required to do so, shall there sign a register in such form as the Commission may from time to time provide.

***Antedating of claims***

7. In any case where good cause is shown for delay in making an application for benefit, the day on which the period of unemployment actually began shall be substituted for the date of the application pursuant to the provisions of section 30 of the Act.

**BENEFITS REGULATIONS, 1946 REFERRED TO IN DECISIONS  
CUB-207 TO CUB-425**

***Prescribed manner for making  
application for benefit***

2. (1) A claimant who desires to obtain benefit shall in such manner as the Commission may from time to time direct

- (a) register for employment at a local office;
- (b) make a claim for benefit at the local office where he registers for employment;
- (c) lodge his insurance contribution records at the local office where he files his claim, or make arrangements to do so, unless they are already there or unless an officer of the Commission dispenses with such lodging in any particular case;
- (d) sign the unemployment register;
- (e) furnish such evidence as may be required regarding any dependent for whom he is claiming; and
- (f) as may be required, furnish such other evidence as to the fulfilment of the conditions and the absence of disqualifications for receiving or continuing to receive benefit and for that purpose attend at such offices or places as directed.

***Prescribed manner for making  
application for benefit by mail***

2. (2) (a) A claimant who resides at such distance from the nearest local office as the Commission may from time to time determine, may be permitted to make application for benefit by

mail and, as proof of being unemployed, capable of and available for work, shall complete such forms as may be required.

- (b) Such claimant may, however, be required to furnish further evidence that he was unemployed, capable of and available for work and entitled to benefit on all or any of the days in respect of which he is claiming, and an officer of the Commission may in any case vary the provisions of paragraph (a) of this subsection, and in any such case the claimant shall furnish such evidence, or attend at a local office, as may be required.

### ***Dependency status clarified***

2. (3) For the purpose of carrying out the provisions of paragraph (2) (d) of section thirty-one of the Act

- (a) a "*self-contained domestic establishment*" shall mean a dwelling house, apartment, or other similar place of residence comprising at least two rooms, in which residence, among other things, the insured person and the dependent for whom he claims, as a general rule sleep and have their meals prepared and served;
- (b) "*connected by blood relationship*" shall refer only to the insured person's parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews and nieces;
- (c) "*connected by marriage*" shall refer only to the parents, grandparents, great grandparents, brothers and sisters of the insured person's spouse and his step children; and
- (d) "*connected by adoption*" shall refer only to children legally adopted;

and in this subsection any statement set out in material presented may be accepted as true, unless the contrary is proven.

### ***Procedure for proving unemployment, capability and availability***

5. (1) A claimant, after filing an application for benefit in the prescribed manner shall, as evidence of being unemployed, capable of and available for work, attend at the local office at which he made his last application for benefit or at such other local office as may be approved in his case, on every working day or on such days and at such time or times as an officer of the Commission may direct, and shall there produce his insurance book for examination and sign the unemployment register.

(2) Such a claimant may be required, notwithstanding that he has duly signed the unemployment register, to furnish further evidence that he was unemployed, capable of and available for work and entitled to benefit on all or any of the days in respect of which he has signed the unemployment register, and an officer of the Commission may in any case dispense with the requirements of subsection one of this section and in any such case the claimant shall furnish such evidence as may be required.

***Antedating of claims***

13. Where a claimant considers that he has good cause for delay in making a claim for benefit and applies to have his claim made effective from a date earlier than the date of such application, an insurance officer may refuse such application, or approve it if the claimant proves

- (a) that on such date he had in all respects fulfilled the conditions for entitlement to benefit and was in a position to furnish proof thereof; and
- (b) that throughout the whole period between such earlier date and the date he made his claim he had good cause for delay in making such claim and furnishing such proof.





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